

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

---

STATE OF ARIZONA, *Respondent*,

*v.*

JENGHIZ K. STEWART, *Petitioner*.

No. 1 CA-CR 16-0603 PRPC  
FILED 8-24-2017

---

Petition for Review from the Superior Court in Maricopa County  
No. CR 1996-005461  
The Honorable Justin Beresky, Judge *Pro Tempore*

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Gerald R. Grant  
*Counsel for Respondent*

Jenghiz K. Stewart, Kingman  
*Petitioner*

**MEMORANDUM DECISION**

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Kenton D. Jones joined.

---

**T H U M M A**, Chief Judge:

¶1 Petitioner Jenghiz K. Stewart seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).<sup>1</sup> Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Because Stewart has shown no such error, this court grants review but denies relief.

¶2 In April 1998, Stewart pled guilty to (1) sexual conduct with a minor, a Class 2 felony, and (2) attempted molestation of a child, a Class 3 felony, both non-repetitive dangerous crimes against children committed in March and April 1996 respectively. In July 1998, the court sentenced Stewart to 17 years in prison for the first count and lifetime probation for the second. In September 2014, after having been released from prison on the first count, Stewart's probation officer filed a petition to revoke his probation, alleging several violations. At a February 2015 hearing, Stewart admitted to violating probation condition 10 by failing to drug test and the court revoked his probation and sentenced him to a presumptive term of 10 years in prison.

¶3 In March 2015, Stewart filed a notice and petition for post-conviction relief, alleging that his sentence was disproportionate to the probation violation and to consequences "others" had received. In April 2015, Stewart filed another petition for post-conviction relief, alleging he did not commit the probation violation that he admitted at the February 2015 hearing. Later in April 2015, the superior court appointed counsel for Stewart. In October 2015, Stewart filed a pro se notice and petition for post-

---

<sup>1</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

STATE v. STEWART  
Decision of the Court

conviction relief again alleging that his sentence was disproportionate to the probation violation.

¶4 In November 2015, after counsel had completed her review and found no colorable claim, the superior court set a deadline of January 2016 for Stewart to file a pro se petition for post-conviction relief. After numerous extensions, Stewart timely filed his petition for post-conviction relief, alleging that his sentence was disproportionate, his probation should not have been revoked, he had been confused and did not violate probation by failing to drug test, there were no justifiable grounds for the revocation of his probation and the superior court was biased and deprived him of a fair hearing. After full briefing, in August 2016, the court found Stewart's claims lacked merit, that no material issue of fact or law would entitle him to relief and dismissed the petition. Stewart later unsuccessfully filed a motion to change judge, alleging a conflict of interest. Stewart then timely sought review by this court.

¶5 Stewart raises six issues in his petition for review, that can be categorized as follows: (1) his sentence is disproportionate to the probation violation and sentences other similarly situated defendants received; (2) judicial bias and (3) the petition to revoke probation and subsequent sentence violated his double jeopardy rights.

¶6 The superior court correctly found Stewart offered no legal or factual basis for his claim of disproportionality. To the extent that Stewart raised a cognizable claim under Ariz. R. Crim. P. 32.1(c), the superior court correctly found Stewart's sentence was within the statutory range and was otherwise in accordance with applicable law. Stewart has offered nothing either factually or legally that would indicate any actionable disproportionality in sentencing.

¶7 Stewart has offered no evidence supporting his judicial bias claim, other than his own arguments. A review of the record indicates that this issue was raised in a motion for change of judge and was found to lack merit.

¶8 Finally, Stewart cites no authority to support his double jeopardy claim. His prison sentence is a result of his underlying guilty plea and his admitted failure to comply with the conditions of his probation grant. Stewart has not shown how such a resulting prison sentence violates his double jeopardy rights.

STATE v. STEWART  
Decision of the Court

¶9 The superior court did not abuse its discretion in dismissing Stewart's post-conviction relief petition. Accordingly, this court grants review but denies relief.



AMY M. WOOD • Clerk of the Court  
FILED: AA