

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

THOMAS JOSEPH NORMAN, *Petitioner*.

No. 1 CA-CR 16-0610 PRPC
FILED 7-6-2017

Petition for Review from the Superior Court in Yavapai County
No. P1300CR990355
The Honorable Cele Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Yavapai County Attorney's Office, Prescott
By Kevin D. Schiff
Counsel for Respondent

Thomas Joseph Norman, Florence
Petitioner

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in
which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

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T H U M M A, Judge:

¶1 Petitioner Thomas Joseph Norman 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).¹ 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). Finding no such error, this court grants review but denies relief.

¶2 In August 1999, Norman pled guilty to two counts of attempted child molestation. The court sentenced him to an aggravated 12-year prison term on count one, followed by a lifetime probation grant to start after he was released from prison on count two. He timely filed a post-conviction relief petition, which was then dismissed.

¶3 Years later, and less than five years after his release from prison, Norman was charged with, and admitted, violating probation on count two. The court concluded Norman’s lifetime probation grant was illegal under *State v. Peek*, 219 Ariz. 182 (2008), and that the lawful term of probation was for five years. Finding Norman violated probation within five years from the date probation began, the court revoked his probation and sentenced him to a presumptive 10-year prison term on count two.

¶4 Norman filed a timely notice of post-conviction relief, claiming that his sentence on count one had been illegally aggravated. He argued that, had he been sentenced to the presumptive 10-year term, he would have been released from prison earlier, meaning his probation grant on count two would have started earlier, meaning his probation obligation would have expired *before* he violated probation. The superior court summarily dismissed, and this timely petition for review followed.

¶5 Norman has shown no abuse of discretion or right to relief. Norman’s challenge to his sentence on count one is untimely and could have been presented in the prior timely post-conviction proceeding that was dismissed. Any claim a defendant could have raised in an earlier and timely post-conviction relief proceeding is precluded. Ariz. R. Crim. P. 32.2(a); 32.4(a).

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

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¶6 The superior court did not abuse its discretion in dismissing Norman's petition for Rule 32 relief. Accordingly, this court grants review but denies relief.



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