

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROBERT MURILLO, *Petitioner*.

No. 1 CA-CR 16-0742 PRPC
FILED 11-21-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2014-102788-001
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Robert Murillo, Florence
Petitioner

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Judge Jon W. Thompson and Chief Judge Samuel A. Thumma joined.

STATE v. MURILLO
Decision of the Court

JONES, Judge:

¶1 Robert Murillo petitions this Court for review from the dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32. We have considered the petition and, for the reasons stated, grant review and deny relief.

¶2 Murillo pleaded guilty to one count each of attempted child prostitution and sexual conduct with a minor arising out of events occurring in August 2013. The plea agreement contained a stipulated sentence to the presumptive term of 3.5 years' imprisonment for attempted prostitution and lifetime probation for sexual conduct with a minor. In October 2014, Murillo was sentenced in accordance with the terms of the plea agreement.

¶3 In September 2016, Murillo filed a notice and petition for post-conviction relief alleging relief was warranted based upon ineffective assistance of counsel and an illegal sentence. The superior court dismissed both the notice and the petition as untimely. Murillo timely petitioned this Court for review.

¶4 We will not disturb a superior court's ruling on a petition for post-conviction relief absent an abuse of discretion or error of law. *State v. Gutierrez*, 229 Ariz. 573, 576-77, ¶ 19 (2012). It is the petitioner's burden to show that the superior court abused its discretion in denying the petition. *See State v. Poblete*, 227 Ariz. 537, 538, ¶ 1 (App. 2011).

¶5 Where a defendant pleads guilty to an offense, post-conviction relief proceedings "must be filed within ninety days after the entry of judgment and sentence." Ariz. R. Crim. P. 32.4(a). Murillo's petition was not filed until almost two years after he was sentenced for the offenses and is untimely. He has not shown that any exception applies. *See* Ariz. R. Crim. P. 32.4(a).

¶6 Accordingly, we grant review and deny relief.