

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALEXANDER KING TRUJILLO, *Petitioner*.

No. 1 CA-CR 18-0470 PRPC
FILED 11-15-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2010-104542-001
The Honorable David O. Cunanan, Judge

REVIEW GRANTED AND RELIEF DENIED

COUNSEL

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

Alexander King Trujillo, Florence
Petitioner

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MEMORANDUM DECISION

Presiding Judge Jennifer M. Perkins delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined

PERKINS, Judge:

¶1 Alexander King Trujillo petitions this Court for review of the dismissal of his petition for post-conviction relief under Arizona Rule of Criminal Procedure 32. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 Trujillo pleaded guilty in 2010 to three dangerous crimes against children: sexual conduct with a minor under age 15 and two counts of attempted sexual conduct with a minor under age 15. The trial court imposed a 20-year prison term to be followed by lifetime probation.

¶3 On May 16, 2018, Trujillo sought post-conviction relief, arguing his continued confinement is unconstitutional in light of *May v. Ryan*, 245 F.Supp.3d 1145 (D. Ariz. 2017), which, according to Trujillo, amounts to a significant change in the law that would probably overturn his convictions or sentences. Trujillo also asserted the State violated his right to a speedy trial by indicting him five years after the offenses occurred. Trujillo further claimed he received ineffective assistance of counsel, and newly discovered material facts exist that probably would have changed the verdict or sentence. He did not provide any argument to support these contentions. The superior court summarily denied relief, and this timely petition for review followed.

¶4 In *May*, the district court held Arizona's child molestation statute violates the 14th Amendment's guarantees of due process and proof beyond a reasonable doubt. 245 F.Supp.3d at 1156. Specifically, the district court held the statute improperly shifts the burden of proof to the defendant requiring him to demonstrate he was not motivated by sexual interest to engage in the charged act. *Id.* at 1156, 1164. Trujillo was convicted of sexual conduct with a minor and attempted sexual conduct with a minor, not of child molestation; *May* does not apply. *May* also has no application because our supreme court has rejected the district court's position. In *State v. Holle*, 240 Ariz. 300 (2016), the supreme court held that lack of sexual motivation is an affirmative defense the defendant must prove and is not an element the state must prove beyond a reasonable doubt. *Id.* at 301, ¶ 1. The court

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also held such a statutory scheme does not violate due process. *Id.* at 308, ¶ 40; *see also Holle v. Arizona*, __U.S.__, 137 S.Ct. 1446 (2017) (cert. denied).

¶5 Trujillo further maintains that the Arizona Legislature’s 2018 statutory amendments passed in response to the *May* decision support his request for post-conviction relief. The amendments at issue revised the molestation and sexual abuse statutes to delete lack of sexual motivation as an affirmative defense. 2018 Ariz. Sess. Laws, ch. 266, §§ 1–2 (2nd Reg. Sess.). The updated statutes are no more helpful to Trujillo than the inapplicable *May* decision.

¶6 Trujillo does not challenge the validity of his guilty plea. He nonetheless argues that the indictment’s purported untimeliness violated his right to a speedy trial. “It is well established that entry of a valid guilty plea forecloses a defendant from raising nonjurisdictional defects.” *State v. Hamilton*, 142 Ariz. 91, 94 (1984). The waiver of non-jurisdictional defects includes deprivations of constitutional rights. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). Further, defects in an indictment do not deprive a court of its power to adjudicate a case; thus, they are not “jurisdictional” issues. *United States v. Cotton*, 535 U.S. 625, 630–31 (2002).

¶7 Trujillo mentions ineffectiveness of counsel as an issue presented for review but presents no argument to support his contention that plea counsel’s representation was deficient. Accordingly, we do not address this issue. *See State v. Rodriguez*, 227 Ariz. 58, 61, ¶ 12, n. 4 (App. 2010) (declining to address argument not presented in petition).

¶8 The superior court did not abuse its discretion in denying Trujillo post-conviction relief. *See State v. Adamson*, 136 Ariz. 250, 265 (1983) (“The granting or denying of . . . a petition [for post-conviction relief] is discretionary with the trial court and will not be reversed by this court unless it affirmatively appears that there has been an abuse of discretion.”). We therefore grant review and deny relief.



AMY M. WOOD • Clerk of the Court
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