

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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JONATHAN BARRETT EDGAR, *Plaintiff/Appellant*,

*v.*

STATE OF ARIZONA, *Defendant/Appellee*.

No. 1 CA-CV 18-0695  
FILED 12-5-2019

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Appeal from the Superior Court in Maricopa County  
No. CV2018-000426  
The Honorable Christopher T. Whitten, Judge

**AFFIRMED**

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COUNSEL

Jonathan Barrett Edgar, Kingman  
*Plaintiff/Appellant*

Arizona Attorney General's Office, Tucson  
By Christopher P. White  
*Counsel for Defendant/Appellee*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Chief Judge Peter B. Swann joined.

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**C A T T A N I**, Judge:

**¶1** Jonathan Barrett Edgar appeals from the superior court's judgment dismissing his civil breach of contract claim against the State for alleged breach of a plea agreement in a criminal case. For reasons that follow, we affirm.

**FACTS AND PROCEDURAL BACKGROUND**

**¶2** In 1997, Edgar pleaded guilty in Pima County Superior Court to second-degree burglary pursuant to a plea agreement. *State v. Edgar*, 2 CA-CR 2015-0047-PR, 2015 WL 4237934, at \*1, ¶ 2 (Ariz. App. July 14, 2015) (mem. decision). The superior court suspended sentence and placed Edgar on five years' intensive probation. *Id.* After a first violation a few months later, the court continued Edgar on probation. *Id.* Soon thereafter, Edgar absconded from probation and spent the next 16 years living in Mexico. *See id.* at \*1, 3, ¶¶ 2, 9. After Edgar's arrest in April 2014, the court revoked probation and, finding two aggravating factors, imposed a maximum term of 7 years' imprisonment. *Id.* at \*1, ¶ 2. Edgar initiated several post-conviction proceedings, none of which resulted in relief for Edgar. *See, e.g., id.* at ¶ 1; *State v. Edgar*, 2 CA-CR 2016-0069-PR, 2016 WL 3774170 (Ariz. App. July 13, 2016) (mem. decision); *see also Edgar v. Ryan*, CV-15-00063-TUC-CKJ, 2018 WL 1695454 (D. Ariz. Apr. 06, 2018) (mem. decision).

**¶3** In January 2018, Edgar filed this civil complaint for specific performance in Maricopa County Superior Court. The complaint alleged that the State breached the terms of the plea agreement by seeking to revoke, rather than modify, probation for Edgar's violation and by raising aggravating circumstances that, when found by the superior court, supported the more-than-presumptive sentence imposed on revocation. Edgar sought specific performance of the agreed terms (that is, modification of his sentence to no more than presumptive) along with \$250,000 in damages, or \$500,000 in damages absent specific performance.

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¶4 The State moved to dismiss for failure to state a claim on which relief could be granted, *see Ariz. R. Civ. P.* 12(b)(6), and requested an award of attorney's fees under A.R.S. §§ 12-341.01 and -349. The court granted the motion after receiving no response from Edgar. Edgar then filed a motion for reconsideration, asserting that the court's ruling must be vacated because he had timely mailed a response to the motion through the prison mailing system. The superior court denied reconsideration, then entered judgment dismissing Edgar's complaint with prejudice and awarding the State \$1,150 in attorney's fees.

¶5 Edgar timely appealed. We have jurisdiction under A.R.S. § 12-2101(A)(1).

DISCUSSION

¶6 Edgar challenges the superior court's dismissal of his contract claim against the State. Dismissal under Arizona Rule of Civil Procedure 12(b)(6) for failure to state a claim is proper if, "assum[ing] the truth of all well-pleaded factual allegations and indulg[ing] all reasonable inferences from those facts," the plaintiff nevertheless "would not be entitled to relief under any interpretation of the facts susceptible of proof." *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶¶ 8–9 (2012) (citation omitted). Although the allegations of the complaint itself are the touchstone, the court may also consider documents attached to or referenced in the complaint, as well as related public records. *Strategic Dev. & Constr., Inc. v. 7th & Roosevelt Partners, LLC*, 224 Ariz. 60, 63–64, ¶¶ 10, 13 (App. 2010). We consider de novo whether dismissal was warranted for failure to state a claim. *Coleman*, 230 Ariz. at 355, ¶ 7.

¶7 First, Edgar argues that the State's motion was technically defective and thus should have been stricken, not granted. But his claims of deficiencies are factually flawed and, in any event, do not bear on the merits of dismissal.

¶8 Although Edgar asserts that counsel for the State improperly failed to include his State Bar number in the caption of the motion to dismiss, *see Ariz. R. Civ. P.* 5.2(a)(1)(B), counsel's bar number in fact appeared directly following his name. While the Arizona Attorney General's Office's law firm identification number did not appear, Edgar offers no authority for the proposition that its absence required the court to strike the motion *sua sponte*.

¶9 Edgar's contention that the motion should have been stricken for failure to comply with the requirements of Arizona Rule of Civil

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Procedure 11 is similarly flawed. *See Ariz. R. Civ. P.* 11(c)(3)(A) (requiring a request for Rule 11 sanctions to “be made separately from any other motion”), (C) (requiring prior good-faith consultation), (D) (requiring written notice of specific sanctionable conduct). Those requirements apply specifically to requests for sanctions under Rule 11 itself, *see Ariz. R. Civ. P.* 11(c)(3) (reciting the requirements for “[a] motion for sanctions *under this rule*”) (emphasis added), and here, the State’s motion sought an award of attorney’s fees under A.R.S. §§ 12-341.01 and -349, which do not include comparable requirements.

**¶10** Second, Edgar urges that the superior court erred by denying his motion for reconsideration. But his argument on appeal (as in the motion for reconsideration itself) focuses solely on whether his response should have been deemed timely filed under the prison-mailbox rule, *see, e.g., Mayer v. State*, 184 Ariz. 242, 244 (App. 1995), not on whether the response provided any valid basis to deny dismissal. It did not.

**¶11** To the extent Edgar’s complaint attacked the validity of his sentence and sought modification by way of specific performance, any such claim must be brought by way of post-conviction proceedings under Arizona Rule of Criminal Procedure 32, not in a collateral civil case such as this. *See Ariz. R. Crim. P.* 32.3 (merging post-trial criminal remedies into Rule 32 proceedings); *State v. Georgeoff*, 163 Ariz. 434, 437 (1990) (directing a defendant alleging breach of plea agreement who fails to object at or before sentencing to “request relief by petition for post-conviction relief”); *see also Hovey v. Superior Court*, 165 Ariz. 278, 282 (App. 1990) (addressing specific performance of a plea agreement within the original criminal case, not by way of collateral civil contract claim). Edgar’s contention (based on language appearing in the civil rules) that Rule 32 displaced only a narrow class of post-trial proceedings is belied by the comprehensive language of the rule itself. *See Ariz. R. Crim. P.* 32.3(a) (“A post-conviction proceeding is part of the original criminal action and is not a separate action. It displaces and incorporates all trial court post-trial remedies except those obtainable by post-trial motions and habeas corpus.”). We express no opinion on the viability of any future Rule 32 claim contesting the validity of his sentence.

**¶12** The damages facet of Edgar’s complaint also fails as a matter of law. Even if breach of a plea agreement could support a claim for damages, any such claim that necessarily relies on invalidity of the conviction or the sentence imposed requires a prior favorable resolution in the underlying criminal case. *Cf. Heck v. Humphrey*, 512 U.S. 477, 484–87 (1994); *Glaze v. Larsen*, 207 Ariz. 26, 32–33, ¶¶ 24, 26–27 (2004); *Overson v.*

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*Lynch*, 83 Ariz. 158, 162–63 (1957). Although Edgar notes that damages are generally a permissible remedy for breach of contract, without a successful Rule 32 ruling invalidating the more-than-presumptive sentence imposed, Edgar cannot show a cognizable injury. We thus affirm dismissal of Edgar’s complaint.

**CONCLUSION**

**¶13** The judgment is affirmed. In an exercise of our discretion, we deny the State’s request for an award of attorney’s fees under A.R.S. §§ 12-341.01 and -349.



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