IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

LEANNA MICHELLE WHITFIELD, *Appellant*.

No. 1 CA-CR 22-0148
FILED 1-10-2023

Appeal from the Superior Court in Maricopa County
No. CR004-129636-001
The Honorable William R. Wingard, Judge *Pro Tempore*

AFFIRMED

APPEARANCES

Maricopa County Attorney's Office, Phoenix
By Robert A. Walsh
Counsel for Appellee

Leanna Michelle Whitfield, Mesa
Appellant

MEMORANDUM DECISION

Judge D. Steven Williams delivered the decision of the court, in which Presiding Judge David D. Weinzweig and Judge Randall M. Howe joined.

W I L L I A M S, Judge:

¶1 Leanna Whitfield appeals the superior court's denial of her application to set aside her convictions and restore firearm rights. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 In 2004, then nineteen-year-old Whitfield was charged with four felonies, three of which alleged her improper use of a firearm. She ultimately pled guilty to two felonies: (1) threatening and intimidating, a class 4 non-dangerous felony, and (2) aggravated assault, a class 3 non-dangerous felony. The remaining two charges were dismissed. The court sentenced Whitfield to 2.75 years imprisonment followed by a three-year probation term. After her term in prison, Whitfield successfully completed probation in 2009.

¶3 In 2021, Whitfield moved the court to set aside her convictions and restore her right to possess a firearm pursuant to A.R.S. §§ 13-905 and -910 respectively. The State was more than a month late in filing its written objection to Whitfield's application. *See* Ariz. R. Crim. P. 29.3.

¶4 The court did not rule on Whitfield's application until the State filed its untimely response. And when the court did rule, it issued two orders the same day. The first stated that Whitfield met the statutory requirements to set aside her conviction, granted the application to set aside, but took no action on her firearm rights. The second stated Whitfield was eligible to have her convictions set aside, but only stated that her "[f]irearm rights are denied due to the nature of the offense."

¶5 Whitfield moved the court to clarify its orders. The court then issued a third order by minute entry stating that, though Whitfield "met all of the statutory requirements for her [convictions to be] set aside," the court was "den[ying] her application to set aside the conviction and to restore her firearm rights at this time," based upon "the concerning nature of [Whitfield's] actions which led to her conviction[s]."

¶6 Whitfield timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21 and 13-4033(A)(3).

DISCUSSION

¶7 Whitfield contends the superior court erred by: (1) considering the State's late response to her application, and (2) misclassifying the offenses as serious.

I. Untimely State Response

¶8 The State concedes it was a month late in filing its response to Whitfield's application. Even so, courts have significant discretion to hear untimely filings. Ariz. R. Crim. P. 16.1(c) (the court "*may* preclude any motion, defense, objection or request not timely raised") (emphasis added); *see also State v. Colvin*, 231 Ariz. 269, 271-72, ¶ 7 (App. 2013); *State v. Vincent*, 147 Ariz. 6, 8 (App. 1985).

¶9 And while the court would have been within its discretion to refuse the State's untimely response, it likewise was within its discretion to allow the same. Whitfield has shown no error.

II. Motion to Set Aside/Restore Firearm Rights

¶10 Whitfield also contends the superior court must have "misclassified the offenses" as serious because she otherwise "met the statutory requirements" for having her convictions set aside under A.R.S. § 13-905. We review a court's refusal to set aside a conviction for an abuse of discretion. *State v. Bernini*, 233 Ariz. 170, 173, ¶ 8 (App. 2013).

¶11 The eligibility to apply to have a conviction set aside in Arizona is available to every person who has fulfilled the conditions of their probation or sentence and been discharged by the court. A.R.S. § 13-905. This does not extend, however, to individuals convicted of dangerous offenses. A.R.S. § 13-905(N)(1).

¶12 Whitfield contends the superior court denied her application because it found her offenses to be dangerous, despite her plea agreement clearly designating the offenses as non-dangerous. To this end, she cites *Bernini*, 233 Ariz. at 175, ¶¶ 15-17, wherein this court held that an offense

designated as non-dangerous at sentencing could not later be treated as a dangerous offense under § 13-905(N)(1).[1]

¶13 But nothing in the record shows that the State or court treated Whitfield's offenses as dangerous. To the contrary, the court stated that Whitfield was statutorily eligible to have her convictions set aside. However, being eligible for relief is not the same as being entitled to it. Whether or not to set aside a conviction "is always discretionary with the court," *State v. Key*, 128 Ariz. 419, 421 (App. 1981), as is the restoration of firearm rights. A.R.S. § 13-910(B).

¶14 The superior court determined that Whitfield's application should be denied based on the "concerning nature of [her] actions which led to her conviction." We cannot say that conclusion was "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State v. Fell*, 242 Ariz. 134, 136, ¶ 5 (App. 2017) (citations omitted).

CONCLUSION

¶15 For the foregoing reasons, we affirm.

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

[1] When *Bernini* was decided, the current provisions of A.R.S. § 13-905 were set forth in § 13-907.