

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 27 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0218-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
BRANDON MICHAEL WILSON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20010416

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Sheila Sullivan Polk, Yavapai County Attorney
By Steve A. Young

Prescott
Attorneys for Respondent

Brandon Michael Wilson

Florence
In Propria Persona

BRAMMER, Judge.

¶1 Petitioner Brandon Wilson seeks review of the trial court’s summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review but, for the following reasons, we deny relief.

¶2 Pursuant to a plea agreement, Wilson was convicted in 2002 of one count of sexual assault of a minor and one count of attempted child molestation, both dangerous crimes against children. The trial court sentenced him to a mitigated, fifteen-year term of imprisonment, to be followed by lifetime probation. This is Wilson’s third post-conviction relief proceeding.

¶3 In his pro se petition for post-conviction relief, Wilson argued his sentences were illegal and unconstitutional and his trial counsel had been ineffective in failing to challenge them. The trial court summarily dismissed his petition, finding his claims precluded and explaining why they did not fall within any of the exceptions to preclusion set forth in Rule 32.2(b). *See* Ariz. R. Crim. P. 32.6(c) (court shall dismiss petition when “no [nonprecluded] claim presents a material issue of fact or law which would entitle the defendant to relief . . . and . . . no purpose would be served by any further proceedings”). This petition for review followed.

¶4 On review, Wilson argues the trial court abused its discretion in dismissing his petition “without conducting an evidentiary hearing to determine the facts underlying [his] claims.” Citing *State v. Cox*, 201 Ariz. 464, ¶ 13, 37 P.3d 437, 441 (App. 2002), and *State v. Vargas-Burgos*, 162 Ariz. 325, 783 P.2d 264 (App. 1989), Wilson maintains his failure to raise his current claims in one of his previous proceedings did “not result in

waiver [because] an illegal sentence is an issue of subject matter jurisdiction which can be raised at any time.”

¶5 But in *State v. Bryant*, we “conclude[d] that we [had] used the word ‘jurisdiction’ imprecisely” in *Vargas-Burgos* and stated that “when the trial court has jurisdiction over the subject matter and parties,” its judgment, “even if voidable and erroneous, [can] only be modified on appeal or by proper and timely post-judgment motion.” *State v. Bryant*, 219 Ariz. 514, ¶¶ 13, 15, 17, 200 P.3d 1011, 1014-15 (App. 2008); *see also State v. Maldonado*, 223 Ariz. 309, ¶¶ 14-18, 223 P.3d 653, 655-56 (2010) (recognizing prior case law applying “outdated concepts of ‘jurisdiction’” and refining principles of jurisdiction in criminal cases). And, although *Cox* stands for the proposition that a defendant may challenge an illegal sentence as fundamental error on appeal, notwithstanding his failure to raise it at sentencing, *Cox*, 201 Ariz. 464, ¶ 13, 37 P.3d at 441, such claims are not exempt from the preclusive effect of Rule 32.2(b). *See State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (illegal sentence claim precluded by waiver); *State v. Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d 945, 958 (App. 2007) (fundamental error not excepted from preclusion).

¶6 We will not disturb a ruling on a petition for post-conviction relief unless the trial court clearly has abused its discretion. *Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948. Here, the court clearly identified, thoroughly analyzed, and correctly resolved the issues Wilson presented, and we need not restate that analysis. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We find no abuse of discretion. Moreover, because the court correctly ruled on the issues Wilson raised “in a fashion that

will allow any court in the future to understand the[ir] resolution,” *id.*, we adopt its order dismissing Wilson’s petition. Accordingly, although we grant review, we deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge