

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
MAY -8 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0015-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
WAYNE PRINCE JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. CR990121

Honorable R. Douglas Holt, Judge

REVIEW GRANTED; RELIEF DENIED

Wayne Prince Jr.

San Luis
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Wayne Prince Jr. seeks review of the trial court’s denial of his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. In October 2000, Prince pleaded guilty to committing first-degree murder in February 1999. He was sentenced to life in prison without the possibility of release until after he had served twenty-five calendar years. He filed a timely, of-right notice of post-

conviction relief in 2001; in the ensuing petition filed by appointed counsel, Prince claimed the court had erred in determining the amount of restitution, and the court granted relief in January 2002.

¶2 In May 2006, Prince filed a second notice of post-conviction relief and, in June, he filed a motion for appointment of counsel. In October 2006, the trial court acknowledged receipt of a petition for post-conviction relief and appendix, apparently filed in propria persona.¹ Noting it had been “many years” since the conviction, the court appointed counsel to review the petition, interview Prince, and “determine whether or not a colorable claim for ineffective assistance of counsel can or ought to be made.” The court specified there would be “no deadline for this action” by counsel and that it would “review the pleadings and determine whether to summarily dismiss the Petition or hold an evidentiary hearing” after it received notice of counsel’s review and any response and reply, if required. In a minute entry after an August 2010 hearing on Prince’s pro se “Motion to Clarify Sentencing Order,” the court noted counsel “inform[ed] the Court that he has been working with the Defendant on a Rule 32 petition for some time now” and deferred ruling on the motion pending filing of a Rule 32 petition. In January 2011, Prince moved the court for appointment of new Rule 32 counsel. The court denied the motion and also summarily dismissed Prince’s Rule 32 proceeding in April 2011, noting appointed counsel “[a]pparently . . . has not found any issue worthy of a new Rule 32

¹Notwithstanding this reference, the record on review does not include a pro se petition for post-conviction relief filed in 2006, and the trial court later indicated that no such petition had been filed.

petition” and finding that claims of ineffective assistance of counsel “that now survive . . . are untimely.” *See* Ariz. R. Crim. P. 32.4(a) (“In a Rule 32 of-right proceeding, the notice must be filed within ninety days after the entry of judgment and sentence or within thirty days after the issuance of the final order or mandate by the appellate court in the petitioner’s first petition for post-conviction relief proceeding.”).

¶3 Prince did not seek review of that decision, and therefore it is not before us. *See* Ariz. R. Crim. P. 32.9(c)(1) (failure to raise issue in petition for review “shall constitute waiver of appellate review of that issue”). In December 2012, Prince filed a petition for a writ of habeas corpus or for relief pursuant to Rule 32 in which he argued he was not sentenced in accordance with the sentencing statute in effect when he committed the murder. The trial court found Prince’s claim precluded and summarily denied relief. This petition for review followed.

¶4 On review, Prince restates his claim that his sentence is illegal and argues the trial court abused its discretion in denying his petition on the ground of preclusion, apparently because he had styled his petition as one seeking a writ of habeas corpus in addition to Rule 32 relief. He argues he is entitled to “absolute discharge from imprisonment at the completion of 25 calendar years” and asks this court to remand his case for appointment of counsel and an evidentiary hearing. We review a trial court’s summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶5 First, Prince “is not entitled to habeas corpus relief because he does not allege any facts which show that he is entitled to immediate release from custody.” *Brown v. State*, 117 Ariz. 476, 477, 573 P.2d 876, 877 (1978). Any claim for habeas corpus relief, by way of an absolute discharge from prison upon his completion of twenty-five years, is premature until he has actually served twenty-five years. *See id.* Moreover, Rule 32.3 provides that a defendant’s application for a writ of habeas corpus “raising any claim attacking the validity of his or her conviction or sentence” shall be treated “as a petition for relief under this rule and the procedures of this rule shall govern.” The trial court correctly applied that rule in determining Prince’s claim of an illegal sentence, cognizable under Rule 32.1(c), was precluded. *See* Ariz. R. Crim. P. 32.4 (“Any notice not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h).”).²

¶6 The trial court did not abuse its discretion in finding Prince’s claim precluded. Accordingly, although we grant review, relief is denied.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

²Although Prince styled his petition below as one based on “Rule 32.1(c), (g), and (h),” he failed to identify any claim for relief based on a significant change in the law that occurred after he was sentenced, pursuant to Rule 32.1(g), or based on his actual innocence, pursuant to Rule 32.1(h).