

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

FRANCISCO LEON,
Petitioner.

No. 2 CA-CR 2013-0383-PR
Filed November 29, 2013

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24

Petition for Review from the Superior Court in Maricopa County

No. CR2007118272001DT

The Honorable Maria del Mar Verdin, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Francisco Leon, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Kelly and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 Petitioner Francisco Leon seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will reverse a trial court's ruling in such a proceeding only when it has clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Leon has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Leon was convicted of three counts of attempted molestation of a child, all dangerous crimes against children. The trial court imposed a ten-year term of imprisonment on one count and suspended the imposition of sentence on the remaining counts, placing Leon on lifetime terms of probation, to begin upon his absolute discharge from prison. Leon thereafter sought and was denied post-conviction relief in 2008. Another department of this court denied review of his subsequent petition for review in that proceeding. *State v. Leon*, No. 1 CA-CR 08-0573-PRPC (memorandum decision filed Oct. 2, 2009).

¶3 In 2012, Leon filed a "petition" for post-conviction relief, apparently attempting to initiate a second Rule 32 proceeding. In it, he cited the United States Supreme Court's decisions in *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), and *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012),¹ and also argued the trial court "lacked subject matter jurisdiction to impose an illegal sentence."

¹Leon abandons this argument on review, and we therefore do not address it. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain "[t]he reasons why the petition should be granted" and

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¶4 In its ruling on the matter, the trial court referred to Leon’s “notice” and essentially treated his filing as a combined notice of and petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.4(a) (Rule 32 proceeding commenced by “filing a notice of post-conviction relief”). The court stated that the “notice does not state any claims for relief nor does it contain any facts, memoranda, or law.” It further found Leon had failed to state a claim that “b[rought] him within the provisions of the Rule” applicable to an untimely or subsequent petition, and it ordered Leon’s “Notice of Post-Conviction Relief” dismissed.

¶5 On review, Leon argues the trial court was incorrect in stating he had not “argue[d] facts or law” and it erred in dismissing the proceeding without a hearing “to discover the facts necessary to establish jurisdiction.” He also makes various arguments relating to subject matter jurisdiction and the general rule that a lack of such jurisdiction cannot be waived.

¶6 We agree with Leon that his “petition” below included some facts, argument, and legal authority. But a defendant is precluded from relief under Rule 32 based on any ground that was or could have been raised at trial or in a previous collateral proceeding. Ariz. R. Crim. P. 32.2(a)(2), (3). And, a claim that a “court was without jurisdiction . . . to impose sentence” is not a claim exempt from the rule of preclusion. Ariz. R. Crim. P. 32.1(b), 32.2(b). Leon’s claim is therefore precluded.

¶7 Furthermore, as the trial court correctly ruled, Rule 32.2(b) requires a defendant in an untimely or subsequent proceeding to “set forth the substance of the specific exception” to preclusion that applies to his claim as well as “the reasons for not

“specific references to the record”); *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (“Failure to argue a claim on appeal constitutes waiver of that claim.”).

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raising the claim in the previous petition or in a timely manner.” Because Leon failed to comply with that rule, the trial court properly dismissed his proceeding. *See* Ariz. R. Crim. P. 32.2(b). For these reasons, although the petition for review is granted, relief is denied.