

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CIRON DONALD JHINGREE,
Petitioner.

No. 2 CA-CR 2015-0010-PR
Filed February 13, 2015

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR2008169331001DT

The Honorable William L. Brotherton Jr., Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Ciron D. Jhingree, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 Petitioner Ciron Jhingree seeks review of the trial court's order dismissing his successive, untimely notice of post-conviction relief and his motion for rehearing, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the trial court's ruling unless it clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Pursuant to a plea agreement, Jhingree was convicted of one count of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs with two prior felony convictions. In April 2010, the trial court sentenced Jhingree to a mitigated, eight-year sentence. The court dismissed Jhingree's first post-conviction proceeding in November 2011.

¶3 Jhingree filed a second notice of post-conviction relief in May 2013, which the trial court summarily dismissed as successive and untimely, and this petition for review followed. In the form Jhingree used for his second notice of post-conviction relief, he indicated he was raising a claim of ineffective assistance of counsel and checked the space in front of the statement, "Newly discovered material facts exist which probably would have changed the verdict or sentence." In specifying the facts upon which he based his contentions, however, Jhingree stated, "'The Petitioner's Aggravated Sentence for DWI/DUI is illegal, and is not based on factual Priors.'" He attached documents related to his prior convictions in New York, ostensibly to support his claim that one of the prior felony convictions was, in fact, a misdemeanor. Notably missing from Jhingree's notice, however, was any explanation why his claim was newly discovered. *See Ariz. R. Crim. P. 32.4(a)* ("Any notice [of post-

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conviction relief] not timely filed may only raise claims pursuant to Rule 32.1(d), (e), (f), (g) or (h).”).

¶4 On review, Jhingree asserts “neither of the priors utilized by the Court . . . were actually and finally arraigned,” and maintains he was entitled to file a petition to support his claim.¹ Because Jhingree has failed to set forth any reasons substantiating a claim of newly discovered evidence pursuant to Rule 32.1(e) or explaining why any other claim would be exempt from preclusion, he has not sustained his burden of showing the trial court abused its discretion in dismissing his untimely notice of post-conviction relief. Merely because Jhingree may have discovered information about his prior convictions after he was sentenced does not make it newly discovered. *See State v. Saenz*, 197 Ariz. 487, ¶ 13, 4 P.3d 1030, 1033 (App. 2000) (“Evidence is not newly discovered unless it was unknown to the trial court, the defendant, or counsel at the time of trial and neither the defendant nor counsel could have known about its existence by the exercise of due diligence.”).

¶5 Moreover, although it appears the trial court believed Jhingree’s reference to an illegal sentence was a claim based on Rule 32.1(c) (illegal sentence), and addressed it as such, the court nonetheless concluded correctly that Jhingree had failed to demonstrate why his untimely notice should not be dismissed pursuant to Rule 32.2(b). *See State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court will sustain trial court if “legally correct for any reason”). Put simply, because Jhingree did not demonstrate to the court that his claim was excepted from

¹We note that this claim—that Jhingree was not arraigned in the prior matters, does not appear to be the same claim he raised in the notice of post-conviction relief—that at least one of the prior convictions was a misdemeanor rather than a felony. We do not review issues not presented to the trial court. *State v. Vera*, 235 Ariz. 571, ¶ 8, 334 P.3d 754, 756-57 (App. 2014); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review “shall contain . . . issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”).

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preclusion on any basis, the court did not abuse its discretion in dismissing his successive, untimely notice of post-conviction relief. *See* Ariz. R. Crim. P. 32.2(b) (trial court required to dismiss successive notice of post-conviction relief if it fails to “set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner”).

¶6 Accordingly, we grant the petition for review but deny relief.