

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAVID L. SYGALL,
Petitioner.

No. 2 CA-CR 2015-0066-PR
Filed May 14, 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NOT FOR PUBLICATION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 Pima County
No. CR20121639001
The Honorable Paul E. Tang, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

D. Jesse Smith, Tucson
Counsel for Petitioner

STATE v. SYGALL
Decision of the Court

MEMORANDUM DECISION

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

HOWARD, Judge:

¶1 David Sygall seeks review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). To the extent the court’s ruling includes statutory interpretation, our review is de novo. *See State v. Wilson*, 200 Ariz. 390, ¶ 4, 26 P.3d 1161, 1164 (App. 2001). Because the court did not err, we deny relief.

¶2 In 2012, Sygall pled guilty to possession of equipment or chemicals for the purpose of manufacturing a narcotic drug. His conviction stemmed from his manufacture of capsules made from “cannabis extract” while not properly licensed under the Arizona Medical Marijuana Act (AMMA). *See* A.R.S. §§ 13-3401(4), (19), (20)(w), 13-3408(A)(3), 36-2801 through 36-2819. The trial court suspended the imposition of sentence and placed Sygall on a two-year term of probation. In April 2014, that conviction was set aside pursuant to A.R.S. § 13-907.

¶3 In October 2014, Sygall filed a petition for post-conviction relief. He stated the “narcotic” designation on his conviction had “made it hard or impossible to find work in his field” as a “researcher on the benefits of medicinal marijuana.” Citing Rule 32.1(g), he claimed a Maricopa County Superior Court decision constituted a significant change in the law applicable to his case. In that decision, the superior court determined the AMMA permitted “qualifying patients to use extracts, including CBD oil, prepared from the marijuana plant.” *Welton v. State*, No. CV 2013-014852, at 6 (Ariz. Super. Ct. Mar. 21, 2014). Sygall argued, therefore, that

STATE v. SYGALL
Decision of the Court

because his “conduct for which he was indicted and convicted is covered by the definition of marijuana,” his conviction was “void ab initio” and his plea lacked an adequate factual basis. The trial court summarily denied relief and this petition for review followed.

¶4 On review, Sygall argues that, by defining marijuana to include cannabis extract, the AMMA “repeal[ed] by implication” the definitions of marijuana and narcotic drugs in § 13-3401, which define cannabis extract as a narcotic drug. Thus, he asserts, his conviction should be “voided or amended to show a conviction for production of marijuana.”

¶5 Sygall apparently has abandoned his claim that the Maricopa County Superior Court decision constitutes a significant change in the law pursuant to Rule 32.1(g).¹ He does not identify what provision of Rule 32.1 would apply to this claim, although it arguably constitutes a claim of actual innocence pursuant to Rule 32.1(h).² As such, it may be raised in an untimely proceeding like this one. *See* Ariz. R. Crim. P. 32.4(a).

¶6 Section 36-2801(8) of the AMMA defines marijuana as “all parts of any plant of the genus cannabis whether growing or

¹This claim is unavailing in any event, in part because trial court decisions have no precedential value. *See State v. Shrum*, 220 Ariz. 115, ¶ 21, 203 P.3d 1175, 1180 (2009).

²A guilty plea generally precludes a claim of innocence. *See State v. Norgard*, 92 Ariz. 313, 315, 376 P.2d 776, 778 (1962) (characterizing as “frivolous” motion to withdraw from plea when “the only basis given . . . was that the defendant apparently changed his mind and claimed to be innocent”). But a defendant may claim pursuant to Rule 32 that the factual basis for a guilty plea was insufficient as a matter of law. *See, e.g., State v. Johnson*, 181 Ariz. 346, 348-51, 890 P.2d 641, 643-46 (App. 1995). Recognizing that the factual basis for a plea need only provide strong evidence of guilt and not proof beyond a reasonable doubt, *see State v. Salinas*, 181 Ariz. 104, 106, 887 P.2d 985, 987 (1994), we assume without deciding that such a claim may be raised pursuant to Rule 32.1(h).

STATE v. SYGALL
Decision of the Court

not, and the seeds of such plant.” Our criminal code provides that marijuana extract, or cannabis, is a narcotic drug. § 13-3401(4), (19), (20)(w). The core of Sygall’s argument is that the definition of marijuana under the AMMA, which includes marijuana extract under *Welton*, trumps the definition of cannabis, or marijuana extract under § 13-3401, as a narcotic drug because it is the more recently enacted statute. See *State v. Jones*, 235 Ariz. 501, ¶ 8, 334 P.3d 191, 193 (2014) (“When ‘two conflicting statutes cannot operate contemporaneously, the more recent, specific statute governs over an older, more general statute.’”), quoting *UNUM Life Ins. Co. of Am. v. Craig*, 200 Ariz. 327, ¶ 29, 26 P.3d 510, 516 (2001). He therefore reasons his conviction of production of a narcotic drug cannot stand.

¶7 Even assuming those definitions conflict in some way, the plain text of § 36-2801 conclusively defeats Sygall’s argument. See *Sell v. Gama*, 231 Ariz. 323, ¶ 16, 295 P.3d 421, 425 (2013) (“‘When the plain text of a statute is clear and unambiguous,’ it controls unless an absurdity or constitutional violation results.”), quoting *State v. Christian*, 205 Ariz. 64, ¶ 6, 66 P.3d 1241, 1243 (2003). The definitions contained in § 36-2801 are expressly limited to Chapter 28.1 of Title 36 and thus do not define the terms used in our criminal statutes in Title 13.

¶8 Although we grant review, we deny relief.