

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MARK L. MITCHAM,  
*Petitioner.*

No. 2 CA-CR 2015-0353-PR  
Filed October 28, 2015

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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NOT FOR PUBLICATION  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.*

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Petition for Review from the Superior Court in Maricopa County  
No. CR1993002983  
The Honorable Cynthia J. Bailey, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Mark L. Mitcham, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Kelly<sup>1</sup> concurred.

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ESPINOSA, Judge:

¶1 Mark Mitcham seeks review of the trial court's order summarily dismissing his untimely notice of and petition for post-conviction relief. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Mitcham has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Mitcham was convicted of six counts of child molestation and two counts of sexual conduct with a minor. The trial court imposed consecutive, presumptive prison terms totaling 142 years. We affirmed his convictions and sentences on appeal. *State v. Mitcham*, 1 CA-CR 94-0757 (memorandum decision filed May 2, 1996). Mitcham initiated post-conviction proceedings in 1997, 2005, and 2010; in each proceeding, the trial court denied relief and this court denied review.

¶3 In 2013, Mitcham filed another notice of and petition for post-conviction relief, claiming, as we understand his argument, there were newly discovered material facts requiring his "absolute discharge" without "further liability," specifically evidence proving the "commercial . . . nature" of the action against him. He asserted the action therefore was improper because the state had failed to respond to his notices that it had no contractual relationship with him. He also appeared to claim that he had received ineffective assistance of counsel and that his due process rights had been

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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violated. The trial court summarily dismissed Mitcham's claim, determining he had not "allege[d] any new facts" and that his remaining claims were precluded and could not be raised in an untimely proceeding. This petition for review followed.

¶4 On review Mitcham asserts the trial court erred in finding his claims precluded because they require a "knowing, voluntary, and intelligent waiver." Our supreme court stated in *Stewart v. Smith*, 202 Ariz. 446, ¶¶ 9-10, 46 P.3d 1067, 1070-71 (2002), that some claims were of sufficient constitutional magnitude to require a knowing waiver. But that reasoning does not apply to untimely proceedings like this one. See *State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8, 323 P.3d 1164, 1166 (App. 2014); see also Ariz. R. Crim. P. 32.4(a). Thus, the court did not err in summarily rejecting Mitcham's claims of a due process violation and ineffective assistance of counsel. And, to the extent Mitcham repeats his claim of newly discovered evidence, he has identified no facts relevant to his convictions and sentences.<sup>2</sup> See Ariz. R. Crim. P. 32.1(e) (permitting post-conviction relief based on newly discovered material facts that "probably would have changed the verdict or sentence"). Finally, although Mitcham suggests his sentences are improper, even if that claim could be raised in an untimely proceeding, he did not raise it below. See Ariz. R. Crim. P. 32.1(c), 32.4(a). We do not address claims raised for the first time on review. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review should contain "issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review").

¶5 Although we grant review, relief is denied.

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<sup>2</sup>Mitcham refers to a 1985 letter from a state senator addressed to the Maricopa County Sherriff discussing the "contractual nature of auto registration and driver's licenses," as well as his 2013 notices to the Arizona Attorney General and Maricopa County Public Defender purporting to disavow any contractual relationship with the State of Arizona.