

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RODNEY SHEPPARD,
Petitioner.

No. 2 CA-CR 2015-0374-PR
Filed December 3, 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NOT FOR PUBLICATION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. CR2009128647001DT
The Honorable Sherry K. Stephens, Judge

REVIEW GRANTED; RELIEF DENIED

Rodney Sheppard, Tucson
In Propria Persona

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

H O W A R D, Judge:

¶1 Petitioner Rodney Sheppard seeks review of the trial court's March 6, 2014 order rejecting his claim that he was entitled to presentence incarceration credit on the prison term the trial court had imposed in this cause in November 2009 after he pled guilty to aggravated assault and first-degree escape. Viewing the claim as one for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., we see no abuse of discretion by the trial court in determining Sheppard was not entitled to such relief. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Pursuant to a plea agreement, Sheppard pled guilty in October 2009 to aggravated assault and first-degree escape in this cause, offenses committed in April 2009, with one historical prior felony conviction. In November, the trial court sentenced him to prison terms of 2.25 and three years, to be served concurrently with one another but, in accordance with the terms of the plea agreement, consecutive to the prison term the court imposed at that time in CR2009-121968-001, in which Sheppard pled guilty to third-degree burglary.² The court also sentenced him to five years' imprisonment

¹The 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.

²As the state noted during the sentencing hearing, the plea agreement provided the sentence in the instant cause would be consecutive to the stipulated, five-year prison term the court was to impose in CR2009-123665-001. In sentencing Sheppard, the court seems to have reversed the order of the prison terms in this cause

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in a third cause, CR2006-123665, to run concurrently to the charges in this case. The court did not give Sheppard any presentence incarceration credit on the terms imposed in the instant cause.

¶3 At the sentencing hearing in the instant cause, the trial court placed Sheppard on probation in a different cause—a third-degree burglary conviction in CR2008-156675-001—to be served upon his release from prison. Additionally, based on the offenses committed in the instant cause, CR2006-123665 and CR2008-156675-001, the court revoked a term of probation Sheppard had begun serving in October 2008 in CR2006-121968-001 for third-degree burglary committed in April 2006. The court sentenced Sheppard in that case to the amount of presentence incarceration he already had served, which was 933 days.³

¶4 Sheppard filed a timely notice of post-conviction relief, initially only in this cause and CR2009-123665-001, but the trial court subsequently added CR2008-156675-001 and CR2006-121968-001 to the proceeding. Appointed counsel filed a notice stating she had reviewed the records in these causes and had found no issue to raise; Sheppard then filed a pro se petition. He challenged the validity of the guilty pleas and sentences in the instant cause and CR2008-156675-001. He did not raise any issue related to presentence incarceration credit. The trial court dismissed the petition and denied Sheppard’s motion for rehearing.

¶5 Sheppard sent the court a series of letters in this cause and CR2009-123665-001 claiming he had not received 197 days’

and in CR2009-123665. Ultimately, the order of Sheppard’s sentences is not before us and does not appear to change the length of Sheppard’s prison term.

³The term of imprisonment in this cause was set to run consecutively to the sentence of time served imposed in CR2006-121968-001. However, by sentencing Sheppard to time served, the sentence in the instant cause necessarily was consecutive, beginning, as it did, after the term in CR2006-121968-001 already was served.

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presentence incarceration credit to which he was entitled. The court denied his requests in August 2013, and November 2013.

¶6 Sheppard sent the trial court another letter in January 2014, again requesting presentence incarceration credit. In its March 6, 2014 order, the court stated, “the matters raised in the letter were previously addressed in this Court’s ruling dated November 1, 2013,” and, finding “no legal or factual basis supporting the defendant’s request,” the court denied relief. Sheppard filed a petition for review pursuant to Rule 32.9(c).

¶7 The claim for additional credit never was properly presented or developed as a request for relief pursuant to Rule 32. Moreover, the claim in Sheppard’s January 2014 letter, was both untimely and precluded. *See* Ariz. R. Crim. P. 32.4(a) (only claims under Rules 32.1(d) through (h) may be raised in untimely proceeding); Ariz. R. Crim. P. 32.2(b) and (c) (defendant precluded from raising waived claim because not raised in initial post-conviction proceeding or adjudicated in prior proceeding).

¶8 In any event, the trial court correctly concluded Sheppard was not entitled to additional credit on his consecutive sentence. *See State v. McClure*, 189 Ariz. 55, 57, 938 P.2d 104, 106 (App. 1997) (“When consecutive sentences are imposed, a defendant is not entitled to presentence incarceration credit on more than one of those sentences.”); *see also State v. Cuen*, 158 Ariz. 86, 88, 761 P.2d 160, 162 (App. 1988) (defendant not entitled to credit on more than one consecutive term, even assuming time was served in multiple causes). We grant the petition for review but because Sheppard has not established the trial court abused its discretion in denying relief, we deny relief.