

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DELMO FIGORA TORREFRANCA,
Petitioner.

No. 2 CA-CR 2015-0449-PR
Filed January 26, 2016

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NOT FOR PUBLICATION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. CR2000002639
The Honorable Cynthia J. Bailey, Judge

REVIEW GRANTED; RELIEF DENIED

Delmo F. Torrefranca, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Delmo Torrefranca seeks review of the trial court's order dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Torrefranca has not met his burden of establishing such abuse here.

¶2 After a jury trial in April 2001, Torrefranca was convicted of sexual conduct with a minor and two counts of sexual abuse, dangerous crimes against children. In June 2001, the trial court sentenced him to a presumptive, twenty-year prison term for the sexual conduct conviction and to lifetime probation for the sexual abuse convictions. We affirmed the convictions on appeal, *State v. Torrefranca*, No. 1 CA-CR 01-0537 (memorandum decision filed Oct. 1, 2002), and denied review of his petition for review of the trial court's dismissal of his first petition for post-conviction relief, *State v. Torrefranca*, No. 1 CA-CR 04-0833 (order filed Aug. 11, 2005). In September 2013, Torrefranca filed another notice of post-conviction relief, which the court summarily dismissed. He apparently did not seek review of that decision but initiated a third post-conviction proceeding by filing the underlying petition in January 2014, in which he challenged the imposition of lifetime probation. The court summarily dismissed his petition, and this petition for review followed.

¶3 In its minute entry dismissing Torrefranca's petition, the trial court found it to be untimely and successive, noting that "an untimely notice may only raise claims pursuant to Rule 32.1(d), (e), (f), (g), or (h)." *See* Ariz. R. Crim. P. 32.4(a). The court further

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concluded that, because Torrefranca's claim challenging the imposition of lifetime probation was raised pursuant to Rule 32.1(c), he was precluded from raising it in an untimely, successive proceeding. *See* Ariz. R. Crim. P. 32.2(a); Ariz. R. Crim. P. 32.4(a).

¶4 On review, Torrefranca argues the claim he raised in his petition below, that the imposition of lifetime probation was illegal, was based on newly discovered evidence pursuant to Rule 32.1(e), thus presumably arguing the trial court erred by finding it precluded. However, the only support Torrefranca provided for his claim based on newly discovered evidence was that he had "[j]ust found out about . . . a partially illegal sentence," to wit, his assertion that he should have received five years' instead of lifetime probation. To be entitled to relief on a claim of newly discovered evidence, a defendant must first demonstrate the evidence is, in fact, newly discovered. *See State v. Serna*, 167 Ariz. 373, 374, 807 P.2d 1109, 1110 (1991) (describing five elements of successful newly discovered evidence claim). Even assuming such information could constitute newly discovered evidence, other than his unsupported assertion that he "just found out about" the illegal portion of his sentence in 2013, Torrefranca has utterly failed to establish such a claim.

¶5 Accordingly, although the trial court dismissed Torrefranca's petition based on Rule 32.1(c) without mentioning Rule 32.1(e), we nonetheless conclude it did not err in doing so. *See State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994) ("We will affirm the trial court when it reaches the correct result even though it does so for the wrong reasons."). Because Torrefranca failed to raise any viable claims in his successive post-conviction relief proceeding, the trial court did not abuse its discretion in summarily dismissing his petition.

¶6 Therefore, although we grant the petition for review, relief is denied.