

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MATTHEW ALAN CLACK,  
*Petitioner.*

No. 2 CA-CR 2016-0245-PR  
Filed September 15, 2016

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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NOT FOR PUBLICATION  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 Pinal County  
No. S1100CR200800583  
The Honorable Kevin D. White, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

M. Lando Voyles, Pinal County Attorney  
By Wade C. Tanner, Deputy County Attorney, Florence  
*Counsel for Respondent*

Matthew Clack, Kingman  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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H O W A R D, Presiding Judge:

¶1 Matthew Clack seeks review of the trial court's order denying his petition for writ of habeas corpus, which the court construed as a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Clack has not met his burden of demonstrating such abuse here.

¶2 Clack pled guilty to kidnapping and attempted child molestation and was sentenced to a seventeen-year prison term followed by a lifetime term of probation. He sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise in a Rule 32 proceeding. The trial court denied Clack's subsequent pro se petition, and this court denied relief on review. *State v. Clack*, No. 2 CA-CR 2011-0236-PR, ¶ 9 (Ariz. App. Nov. 29, 2011) (mem. decision).

¶3 In March 2016, Clack filed in Mohave County a petition for writ of habeas corpus in which he asserted various claims regarding his sentence and term of probation. Pursuant to Rule 32.3, that petition was transferred to Pinal County and construed as a petition for post-conviction relief. The trial court summarily denied relief, and this petition for review followed.

¶4 We first note that, in his petition for review, Clack frequently incorporates by reference arguments made below. That procedure is not permitted by our rules. *See* Ariz. R. Crim. P. 32.5, 32.9(c); *State v. Bortz*, 169 Ariz. 575, 578, 821 P.2d 236, 239 (App.

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1991). We therefore limit our review to the arguments raised and developed in Clack's petition for review.

¶5 Clack asserts as he did below that transfer of his petition pursuant to Rule 32.3 improperly "abrogates" his constitutional "right to the privilege of the writ of habeas corpus." The crux of his argument appears to be that he is entitled to seek habeas relief because his claims cannot be raised in an untimely Rule 32 proceeding. Thus, he concludes, application of Rule 32.3 limits his constitutional and appellate rights.

¶6 We disagree. "In Arizona, the writ of habeas corpus may be used only to review matters affecting a court's jurisdiction." *In re Oppenheimer*, 95 Ariz. 292, 297, 389 P.2d 696, 700 (1964). Thus, "[t]he writ of habeas corpus is not the appropriate remedy to review irregularities or mistakes in a lower court unless they pertain to jurisdiction." *State v. Court of Appeals*, 101 Ariz. 166, 168, 416 P.2d 599, 601 (1966). Although Clack attempts to characterize his claims as involving the court's jurisdiction, he has identified no jurisdictional defect. An illegal sentence does not implicate the trial court's subject matter jurisdiction. *See State v. Bryant*, 219 Ariz. 514, ¶¶ 16-17, 200 P.3d 1011, 1015 (App. 2008). Clack's claims clearly "attack[] the validity of his . . . sentence" and must be addressed under Rule 32.<sup>1</sup> Ariz. R. Crim. P. 32.3.

¶7 Clack also asserts, as we understand his argument, that the time limits for post-conviction relief impose an improper "statute of limitations" on his habeas claims.<sup>2</sup> *See* A.R.S. § 13-

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<sup>1</sup>Because the trial court properly construed Clack's petition as a petition for post-conviction relief, we need not address his request that we treat his petition for review as an "appeal and as a special action."

<sup>2</sup>We do not address Clack's related argument that a "conflict" exists between Rule 32 and its governing statutes and "the civil rules of procedure" and statutes governing habeas proceedings. He has not developed this argument in any meaningful way in his petition for review, instead seeking to incorporate by reference motions filed

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4234(C) (requiring post-conviction proceeding in noncapital cases to be initiated “within ninety days after the judgment and sentence are entered or within thirty days after the order and mandate affirming the judgment and sentence is issued on direct appeal”). First, as we have explained, Clack has not raised a proper habeas claim under Arizona law. In any event, our legislature is entitled to determine the time limits for bringing various actions. *See Stulce v. Salt River Project Agric. Improvement and Power Dist.*, 197 Ariz. 87, ¶ 22, 3 P.3d 1007, 1013 (App. 1999) (Arizona Constitution “specifically empowers the legislature to enact statutes of limitations and procedures that may treat lawsuits against the state differently from other lawsuits.”); *see also* Ariz. Const. art. IV, pt. 2, § 18.

¶8 Clack further argues the trial court’s determination that his claims are precluded pursuant to Rule 32.2 is contrary to the United States Supreme Court’s discussion of preclusion in *Sanders v. United States*, 373 U.S. 1 (1963). Even if we agreed that *Sanders* had any relevance to preclusion under Rule 32.2 and that the rule did not conclusively bar Clack’s claims of sentencing error, his claims cannot be raised in this untimely proceeding in any event. Ariz. R. Crim. P. 32.4(a). Thus, we need not address this argument further.

¶9 Clack also contends the trial court erred in construing his petition as “the substantial equivalent” of a notice of post-conviction relief in response to Clack’s motion seeking clarification whether he was required to file a separate notice of post-conviction relief pursuant to Rule 32.4(a) after his petition was transferred to Pinal County pursuant to Rule 32.3. Even if we agreed the court had erred in doing so, however, that would not entitle Clack to relief on review because this proceeding warranted summary dismissal irrespective of whether Clack was required to file a notice. *See State v. Banda*, 232 Ariz. 582, n.2, 307 P.3d 1009, 1012 n.2 (App. 2013) (“We

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in the trial court. *See* Ariz. R. Crim. P. 32.5, 32.9(c); *State v. Bortz*, 169 Ariz. at 578, 821 P.2d at 239; *see also State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).

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can affirm the trial court's ruling for any reason supported by the record.").

¶10 We grant review but deny relief.