

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RONALD LESLIE MURRAY,
Petitioner.

No. 2 CA-CR 2016-0368-PR
Filed February 21, 2017

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NOT FOR PUBLICATION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 Cochise County
No. CR89000193
The Honorable John F. Kelliher Jr., Judge

REVIEW GRANTED; RELIEF DENIED

Ronald Leslie Murray, Florence
In Propria Persona

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MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Petitioner Ronald Murray petitions this court for review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he claimed the Arizona Department of Corrections (ADOC) has incorrectly calculated his prison terms, release credits, and parole eligibility. Absent a clear abuse by the trial court of its discretion to determine whether post-conviction relief is warranted, we will not disturb the court's ruling. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 Following a jury trial, Murray was convicted of kidnapping, sexual assault, robbery, and two counts of theft by control. The trial court sentenced him to concurrent and consecutive prison terms that totaled forty-two years. This court affirmed the convictions and sentences on appeal, *State v. Murray*, No. 2 CA-CR 89-0564 (Ariz. App. Aug. 2, 1990) (mem. decision) but Murray successfully challenged the "flat-time" prison terms in a post-conviction proceeding; the supreme court granted relief based on its decision in *State v. Tarango*, 185 Ariz. 208, 914 P.2d 1300 (1996). *State v. Murray*, 194 Ariz. 373, 982 P.2d 1287 (1999). This court subsequently denied Murray relief on review after the trial court denied relief in multiple post-conviction proceedings. *See State v. Murray*, No. 2 CA-CR 2014-0161-PR (Ariz. App. Sept. 16, 2014) (mem. decision); *State v. Murray*, No. 2 CA-CR 2014-0003-PR (Ariz. App. May 21, 2014) (mem. decision); *State v. Murray*, No. 2 CA-CR 2012-0443 (Ariz. App. Feb. 13, 2013) (mem. decision); *State v. Murray*, Nos. 2 CA-CR 2008-0401-PR, 2 CA-CR 2008-0404-PR, 2 CA-CR 2008-0430-PR, 2 CA-CR 2009-0049-PR (Ariz. App. July 21, 2009) (consol. mem. decision); *State v. Murray*, No. 2 CA-CR 2007-0089-PR (Ariz.

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App. June 29, 2007) (mem. decision); *State v. Murray*, No. 2 CA-CR 2006-0145-PR (Ariz. App. Nov. 30, 2006) (mem. decision).

¶3 In December 2015, Murray filed the current petition for post-conviction relief, and filed an amended petition in June 2016. Relevant to his petition for review, Murray argued below that, notwithstanding the relief he obtained in the supreme court, ADOC is treating one of his prison terms as a “flat-time” term, is not regarding him as eligible for parole, and has not correctly calculated his earned release credits. Murray requested that the trial court conduct an evidentiary hearing on his claim and asked that it order ADOC to recalculate his sentences, apply his earned release credits, and determine whether he should be released. Finding the claim precluded, *see* Ariz. R. Crim. P. 32.2, and, alternatively, without merit based on an exhibit the state attached to its response to the petition, the trial court summarily denied the petition. The court also denied Murray’s motion for reconsideration. In his petition for review, Murray contends the court abused its discretion in refusing to instruct ADOC to re-determine his sentences and “to explain or justify its calculations of [his] . . . sentence to insure he is not being held in custody after the sentences imposed have expired.”

¶4 The claim Murray has raised in this proceeding and the relief he is requesting do not fall within Rule 32.1(d), (e), (f), (g) or (h), and could not, therefore, be raised in this untimely, successive proceeding. *See* Ariz. R. Crim. P. 32.4(a); *State v. Lopez*, 234 Ariz. 513, ¶ 5, 323 P.3d 1164, 1165 (App. 2014). Contrary to Murray’s suggestion in his petition for review, this is not a claim of newly discovered evidence. Neither is it based on a significant change in the law, as contemplated by Rule 32.1(e) and (g), respectively.

¶5 Murray also suggests, as he did below, that the claim falls under Rule 32.1(d). But he has not established that he is “being held in custody after the sentence[s] imposed ha[ve] expired.” Ariz. R. Crim. P. 32.1(d). The document the state submitted with its response to the petition, which is apparently from the ADOC website, shows a sentence-expiration date of March 2005 on Murray’s first twenty-one-year term, and a sentence-expiration date of September 2025 on his remaining twenty-one-year sentence with

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a release date of June 2025. Although the document does not show how ADOC calculated these dates, it suggests ADOC is not treating any of the terms as flat-time terms. Moreover, Murray did not provide the trial court with documentation supporting his suggestion that ADOC does not regard him as parole-eligible. In any event, Murray's claim is "not cognizable under Rule 32 unless [it] result[s] in the defendant remaining in custody when he should otherwise be free." *State v. Davis*, 148 Ariz. 62, 64, 712 P.2d 975, 977 (App. 1985). As the comment to Rule 32.1(d) explains, although the provision is intended to address miscalculations of a sentence or of "good time" credits, it applies only when the petitioner is claiming that, but for the alleged error, he would have been released. Ariz. R. Crim. P. 32.1(d) cmt. Although post-conviction relief is available to correct any denial of parole eligibility at variance with *State v. Tarango*, 185 Ariz. 208, 914 P.2d 1300, or *State v. Arizona Department of Corrections*, 187 Ariz. 211, 928 P.2d 635 (1996), Murray did not present the trial court with sufficient evidence to establish a colorable claim of that nature.

¶6 Murray has not sustained his burden of establishing the trial court abused its discretion by summarily dismissing his petition for post-conviction relief and denying his motion for reconsideration. Accordingly, although we grant the petition for review, relief is denied.