

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JEFFERY S. DAVIS,
Petitioner.

No. 2 CA-CR 2017-0213-PR
Filed December 29, 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NOT FOR PUBLICATION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 Greenlee County
No. CR201000042
The Honorable Michael Latham, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Jeremy O. Ford, Greenlee County Attorney, Clifton
Counsel for Respondent

Jeffery S. Davis, Kingman
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Eppich concurred.

ECKERSTROM, Chief Judge:

¶1 Jeffery Davis seeks review of the trial court's October 2016 order denying his motion to withdraw his December 2010 plea of no contest and to vacate the judgment, and its May 2017 denial of his motion for relief from judgment, which the court treated as a motion for reconsideration of the prior order. For the reasons stated, we grant the petition for review but deny relief.

¶2 Pursuant to a plea of no contest, Davis was convicted in 2010 of sexual conduct with a minor and attempted molestation of a child. The trial court sentenced him to a presumptive prison term of twenty years, followed by lifetime probation. Over a year and a half later, Davis sought leave pursuant to Rule 32.1(f), Ariz. R. Crim. P., to file a delayed Rule 32 petition, which the court denied after an evidentiary hearing. This court denied relief on review. *State v. Davis*, No. 2 CA-CR 2013-0131-PR (Ariz. App. Jul. 31, 2013) (mem. decision).

¶3 In September 2016, Davis filed a motion to withdraw his no contest plea and to vacate the judgment of conviction, pursuant to Rule 17.5, Ariz. R. Crim. P. The state filed a notice of receipt of the motion, suggesting that Davis appeared to be seeking post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The trial court denied the motion at the end of October. In April 2017, Davis filed a motion for relief from judgment pursuant to Rule 60, Ariz. R. Civ. P., and Rule 35.4, Ariz. R. Crim. P., in which he asked the court to reconsider its denial of his motion to withdraw his plea. The court denied the motion. Davis filed a notice of appeal and an opening brief, which this court regarded as a petition for review of the denial of post-conviction relief, and permitted him to file a petition.

¶4 In his motion to withdraw the plea and vacate the judgment, Davis alleged there were defects during the plea proceeding, including a defective factual basis for the plea, and asserted trial counsel had been ineffective. So viewed, the claims were at least cognizable under

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Rule 32.1(a). The motion to set aside the judgment, if viewed as a motion for reconsideration pursuant to Rule 32.9(a), was clearly untimely. Nevertheless, apparently overlooking the untimeliness of that motion, the trial court denied it on the merits.

¶5 We will not disturb these rulings because we cannot say the trial court abused its discretion in denying Davis's request for relief. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). The claims Davis has raised in these motions are barred as untimely because they do not fall within Rule 32.1(d) through (h). *See Ariz. R. Crim. P. 32.4(a); State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8 (App. 2014) (constitutional claims subject to rules of timeliness).

¶6 We grant the petition for review but for the reasons stated, we deny relief.