

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

LANCER JAMES MOORE,  
*Petitioner.*

No. 2 CA-CR 2017-0274-PR  
Filed October 30, 2017

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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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2013003255001DT  
The Honorable Peter C. Reinstein, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Amanda M. Parker, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

Lancer Moore, Kingman  
*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Howard<sup>1</sup> concurred.

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ESPINOSA, Judge:

¶1 Lancer Moore seeks review of the trial court's order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's order unless the court clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Moore has not met his burden of demonstrating such abuse here.

¶2 In 2014, Moore pled guilty to sexual conduct with a minor under the age of fifteen and two counts of attempted sexual abuse of a minor under the age of fifteen. The trial court sentenced him to a twenty-year prison term for sexual conduct, to be followed by concurrent terms of lifetime probation for attempted sexual abuse. Moore sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claims to raise in a Rule 32 proceeding.

¶3 Moore filed a pro se petition arguing he had been improperly sentenced pursuant to A.R.S. § 13-705 for a dangerous crime against children because the state did not demonstrate he had committed a "dangerous offense" as defined by A.R.S. § 13-105(13). Thus, he concluded, he was required to be sentenced to a five-year prison term as a first-time offender under A.R.S. § 13-702. He also argued the prosecutor had committed misconduct by inserting a sentencing range based on § 13-705 into the plea agreement, and that his trial counsel had been ineffective for failing to adequately

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<sup>1</sup>The Hon. Joseph W. Howard, 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.

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“investigat[e] or research” whether § 13-705 properly applied to his case. The trial court summarily dismissed the petition, and this petition for review followed.

¶4 On review, Moore briefly summarizes the claims he raised below and argues the trial court erred by rejecting them. First, to the extent Moore attempts to incorporate by reference his pro se petition filed below, that procedure is not permitted by our rules. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv); *State v. Hess*, 231 Ariz. 80, ¶ 13, 290 P.3d 473, 477 (App. 2012). We therefore limit our review to the arguments raised in Moore’s petition for review.

¶5 Moore contends the trial court committed “fundamental error” in rejecting his claims, again arguing his sentence under § 13-705 was improper. The crux of his argument, as it was below, appears to be that absent evidence that his crime constituted a dangerous offense, he cannot be sentenced for a dangerous crime against children.

¶6 We find no support for Moore’s argument – the statutory language is entirely clear. *See State v. Lee*, 236 Ariz. 377, ¶ 16, 340 P.3d 1085, 1090 (App. 2014) (plain language best indicator of legislative intent). Moore committed sexual conduct with a minor under the age of fifteen, in violation of § 13-1405(A). According to § 13-1405(B), that offense “is punishable pursuant to § 13-705.” And, consistent with that provision, the definition of a “[d]angerous crime against children” includes sexual conduct with a minor. § 13-705(P)(1)(e). Further, § 13-705(C) provides the applicable sentencing range for “sexual conduct with a minor who is twelve, thirteen or fourteen years of age.” That range includes a presumptive term of twenty years – the term imposed in this case. *See* § 13-705(C). Section 13-704, A.R.S., governing the sentences for dangerous offenses, excepts dangerous crimes against children. *See* § 13-704(A)-(E). Moore has identified no ambiguity in this statutory scheme.

¶7 Although we grant review, relief is denied.