

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

BRIAN SHALOM HUNTER,  
*Petitioner.*

No. 2 CA-CR 2017-0233-PR  
Filed

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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NOT FOR PUBLICATION  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. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR20082451  
The Honorable Richard S. Fields, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Brian Shalom Hunter, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

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

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E P P I C H, Judge:

¶1 Brian Hunter seeks review of the trial court’s order summarily denying his untimely 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. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Hunter has not shown such abuse here.

¶2 Hunter was convicted after a jury trial of two counts of selling or transferring a narcotic drug, one count of possessing a narcotic drug for sale, and one count of possessing drug paraphernalia. The trial court sentenced him to enhanced, concurrent prison terms, the longest of which are fourteen years, some of which the court described at sentencing as “mitigated” terms. We affirmed Hunter’s convictions and sentences on appeal, but we vacated a criminal restitution order entered at sentencing. *State v. Hunter*, No. 2 CA-CR 2011-0090 (Ariz. App. May 15, 2013) (mem. decision).

¶3 In May 2017, Hunter filed a petition for post-conviction relief arguing the sentencing statute in effect at the time of his indictment did not include a “mitigated” term and the court must have intended “to render a minimum sentence” of 10.5 years, because that is the “mitigated” term pursuant to the sentencing statute in effect at the time of his sentencing. He asserted he had only recently become aware of “applicable law” regarding this issue, and indicated that he was raising a claim of newly discovered evidence and that he was being held beyond the expiration of his sentence. The trial court summarily denied relief. This petition for review followed.

¶4 On review, Hunter repeats his argument that his recent discovery of the purported sentencing error constitutes newly discovered evidence pursuant to Rule 32.1(e). He is mistaken. A claim of newly discovered material facts does not encompass newly discovered legal theories or authority. *See generally State v. Saenz*, 197 Ariz. 487, ¶ 7 (App. 2000) (to establish claim of newly discovered evidence, defendant must show “that the evidence was discovered after trial although it existed before

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trial; that it could not have been discovered and produced at trial through reasonable diligence; that it is neither cumulative nor impeaching; that it is material; and that it probably would have changed the verdict”). And Hunter has not established that his claim falls within any other exception to the timeliness requirement of Rule 32.4(a)(2)(A). The trial court did not err in summarily dismissing his petition.

¶5 We grant review but deny relief.