

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SAMUEL OSCAR ROSTHENHAUSLER,
Petitioner.

No. 2 CA-CR 2018-0068-PR
Filed July 9, 2018

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NOT FOR PUBLICATION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).

Petition for Review from the Superior Court in Pima County
Nos. CR012906001 and CR012907001
The Honorable Kyle Bryson, Judge

AFFIRMED

Samuel Rosthenhausler, Tucson
In Propria Persona

STATE v. ROSTHENHAUSLER
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

ECKERSTROM, Chief Judge:

¶1 Samuel Rosthenhausler seeks review of the trial court's order denying his motion seeking release from prison for medical reasons. In our discretion, we construe his petition for review filed pursuant to Rule 32.9(c) as a notice of appeal, and affirm the trial court's order.

¶2 Rosthenhausler was convicted of numerous offenses committed in 1984 and sentenced to concurrent and consecutive prison terms totaling sixty years. In February 2018, he filed a "Medical Release Motion" citing A.R.S. § 13-3961.01 and asserting that he is entitled to compassionate release due to severe health issues, placing his "medical life expectancy" at "[n]ine to twelve months." The trial court denied the motion, noting that § 13-3961.01 did not apply to defendants who had begun serving a prison sentence and that the Board of Executive Clemency had exclusive authority to consider Rosthenhausler's request for release, citing A.R.S. § 31-402(A).

¶3 Rosthenhausler then filed the instant petition for review, citing Rule 32.9(c), Ariz. R. Crim. P., and repeating his request for compassionate release pursuant to § 13-3961.01. A petition for review under Rule 32.9(c) is not the proper method to seek review of the trial court's ruling; Rosthenhausler did not seek relief under Rule 32 and no provision of Rule 32.1 would encompass his request. In our discretion, we therefore construe his petition for review as a notice of appeal filed pursuant to A.R.S. § 13-4033(A)(3). However, Rosthenhausler has identified no error in the trial court's determination that it had no authority to grant compassionate release, and we find none.

¶4 We affirm the trial court's order denying Rosthenhausler's motion seeking release from prison.