

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

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

GERALD RAY TIMMONS,  
*Petitioner.*

No. 2 CA-CR 2019-0241-PR  
Filed April 16, 2020

---

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NOT FOR PUBLICATION  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  
No. CR20031946  
The Honorable Howard Fell, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

Barton & Storts P.C., Tucson  
By Brick P. Storts III  
*Counsel for Petitioner*

STATE v. TIMMONS  
Decision of the Court

---

MEMORANDUM DECISION

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

---

E P P I C H, Presiding Judge:

¶1 Gerald Timmons seeks review of the trial court’s ruling denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Timmons has not met his burden of establishing such abuse here.

¶2 After a jury trial, Timmons was convicted of armed robbery, aggravated robbery, and six counts each of kidnapping and aggravated assault. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling 30.5 years. As relevant here, Timmons received concurrent 10.5-year terms for each of the kidnapping counts, to be served consecutively to the twenty-year term for armed robbery. This court affirmed Timmons’s convictions and sentences on appeal. *State v. Timmons*, No. 2 CA-CR 2004-0058 (Ariz. App. Oct. 27, 2005) (mem. decision).

¶3 Thereafter, Timmons filed a petition for post-conviction relief, raising claims of ineffective assistance of trial and appellate counsel, as well as issues with alleged juror misconduct, prosecutorial misconduct, and improper in-court identification procedures. The trial court summarily dismissed the petition, and this court denied relief on review. *State v. Timmons*, No. 2 CA-CR 2009-0306-PR (Ariz. App. Mar. 10, 2010) (mem. decision). Five years later, Timmons filed a second petition for post-conviction relief, which the trial court also summarily dismissed. Timmons did not seek review of that ruling but instead filed a third petition

---

<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

STATE v. TIMMONS  
Decision of the Court

for post-conviction relief. The trial court denied relief, as did this court on review. *State v. Timmons*, No. 2 CA-CR 2016-0261-PR (Ariz. App. Oct. 6, 2016) (mem. decision).

¶4 In May 2018, Timmons filed a notice of post-conviction relief in which he asserted a claim of newly discovered material facts, reasoning that he had “only recently become aware of” A.R.S. § 13-116 and *Alleyne v. United States*, 570 U.S. 99 (2013). The trial court summarily dismissed the notice, explaining that Timmons had failed to raise a colorable claim under Rule 32.1(e) because “statutes, legal opinions, and case law are not evidence.” Timmons did not seek review of that ruling.

¶5 In June 2019, Timmons filed the instant petition for post-conviction relief, arguing the consecutive sentences for his armed robbery and kidnapping convictions violate his right against double jeopardy under § 13-116 and *State v. Gordon*, 161 Ariz. 308 (1989). Timmons also claimed he was entitled to relief under the rule of lenity if “there is a conflict in the statutes.” He asserted his claim fell under Rule 32.1(d), which allows relief when a “defendant continues to be or will continue to be in custody after his . . . sentence expired.”

¶6 The trial court summarily dismissed the petition, reasoning that Timmons’s claim did not fall under Rule 32.1(d) because any argument that his sentence has now expired was necessarily premised on the court granting relief. And the court determined that his claim was precluded under Rule 32.2(a) because “the issue has not been raised previously and could have been.” Nevertheless, the court went on to address, and reject, the merits of Timmons’s claim.

¶7 On review, Timmons reasserts his claim that the consecutive sentences for his armed robbery and kidnapping convictions violate his double jeopardy rights under § 13-116 and *Gordon*. However, the trial court clearly identified Timmons’s sentencing claim and correctly resolved it on the merits.<sup>2</sup> Because that analysis is thorough and well-reasoned, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

---

<sup>2</sup>Because the trial court correctly addressed the merits of Timmons’s claim, we need not decide whether the claim was precluded.

STATE v. TIMMONS  
Decision of the Court

¶8 Accordingly, although we grant the petition for review, we deny relief.