

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JAMES GUILIE WOODS,  
*Petitioner.*

No. 2 CA-CR 2020-0093-PR  
Filed September 4, 2020

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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NOT FOR PUBLICATION  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. CR040292  
The Honorable Renee T. Bennett, Judge

**REVIEW GRANTED; RELIEF DENIED**

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James G. Woods, Buckeye  
*In Propria Persona*

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MEMORANDUM DECISION

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

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ESPINOSA, Judge:

¶1 Petitioner James Woods seeks review of the trial court’s order summarily dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We review a court’s denial of post-conviction relief for an abuse of discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 Following a jury trial, Woods was convicted of two counts of aggravated assault, and one count each of armed robbery and robbery. Because Woods was on release when he committed the offenses, the trial court imposed three mandatory life sentences without the possibility of release until he had served twenty-five years (two of which are concurrent with each other but consecutive to the other life term), and to a concurrent five-year sentence. *See* former A.R.S. § 13-604.02.<sup>2</sup> We affirmed Woods’s convictions and sentences as modified on appeal.<sup>3</sup> *State v. Woods*, No. 2 CA-CR 93-0482 (Ariz. App. Aug. 30, 1994) (mem. decision). Woods

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<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). In its order adopting the amended rules, the court stated, in relevant part, that the amendments apply to “all actions filed on or after January 1, 2020.” *Id.* It appears Woods was convicted and sentenced in 1993, but the instant proceeding was filed in March 2020; therefore, the amended rules apply.

<sup>2</sup>We refer in this decision to former § 13-604.02, *see* 1993 Ariz. Sess. Laws, ch. 255, § 9, now renumbered as § 13-708, *see* 2008 Ariz. Sess. Laws, ch. 301, § 17, as codified when Woods committed his offenses.

<sup>3</sup>As we noted on appeal, the sentencing error we corrected was “of no consequence” and did not meaningfully impact the sentences imposed. *Woods*, No. 2 CA-CR 93-0482, at 5.

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subsequently initiated at least three post-conviction proceedings in which counsel was appointed to represent him.<sup>4</sup>

¶3 In March 2020, Woods filed his most recent petition for post-conviction relief, challenging the legality of his sentences imposed under § 13-604.02(A), based on a claim of a significant change in the law pursuant to Rule 32.1(g), Ariz. R. Crim. P.<sup>5</sup> Woods argued his sentences are illegal under the revised version of § 13-604.02 and asserted that the “corrective process” (the Disproportionality Review Act—the “DRA”) for resentencing prisoners like him was inadequate, maintaining he is entitled to immediate release. He argued he was unable to raise this claim earlier because in August 1997, the Arizona Department of Corrections (ADOC) implemented a new system that closed all of the ADOC law libraries. Woods further pointed out that, in December 2018, after he had served “25 flat calendar years,” the Arizona Board of Executive Clemency granted him

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<sup>4</sup>Although the trial court referred below to “two previous requests for post-conviction relief” in which Woods was represented by counsel, it appears there were three such proceedings.

<sup>5</sup>Section 13-604.02, amended effective January 1, 1994, governs sentencing for crimes committed while released from confinement. 1993 Ariz. Sess. Laws, ch. 255, § 9. It appears Woods committed the instant crimes in 1992 and was sentenced in 1993. The applicable version of § 13-604.02(A) provided that for certain felony offenses while “on probation for a conviction of a felony offense or parole,” the person “shall be sentenced to life imprisonment and is not eligible for suspension or commutation of sentence . . . or release from confinement on any other basis . . . until the person has served not less than twenty-five years.” *See id.* The amended statute, which the legislature limited to felony offenses after January 1, 1994, provided that offenses committed while released from confinement required “imprisonment for not less than the presumptive sentence.” 1993 Ariz. Sess. Laws, ch. 255, §§ 9, 99. To remedy the disparity in sentences between crimes before and after 1994, the legislature enacted the Disproportionality Review Act, which authorized the Arizona Board of Executive Clemency to review and recommend to the governor commutations of sentences for certain offenses committed before 1994; that act was repealed in June 1996. *See* 1994 Ariz. Sess. Laws, ch. 365, § 1; *see also McDonald v. Thomas*, 202 Ariz. 35, ¶ 3 (2002).

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institutional parole on one of his life sentences to his consecutive life sentence, suggesting that his sentences had expired.<sup>6</sup>

¶4 In its order summarily dismissing Woods’s petition, the trial court noted that although Woods had asserted he did not raise his claim previously “due to deficiencies” in ADOC’s law libraries, he had, in fact, previously been represented by counsel. The court further noted that in order to raise a claim based on a significant change in the law in a successive notice like this one, a defendant is required to explain why he did not raise the claim in a previous notice or petition. *See* Ariz. R. Crim. P. 32.2(b). Concluding that Woods had failed to provide sufficient reasons why he had not previously raised his current claim, which is “based on a 1994 change in the law,” the court summarily dismissed his petition.<sup>7</sup> This petition for review followed.

¶5 On review, Woods claims the trial court abused its discretion by finding he had failed to provide sufficient reasons for not having raised his claim previously and asserts he is entitled to an evidentiary hearing. However, other than a reference to changes in ADOC’s law libraries more than twenty years earlier, Woods did not explain why he failed to raise this claim earlier, as the court correctly noted.

¶6 Moreover, to the extent Woods suggests the trial court “acknowledged” that his prior attorneys had been ineffective for having failed to raise this issue previously, the record simply does not support his interpretation of the court’s comment. Although the court did, in fact, point out that Woods had been represented by counsel in his prior Rule 32 proceedings, we infer it did so in the context of his assertion that his inability to access ADOC’s law libraries had prevented him from raising his

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<sup>6</sup>Although Woods briefly referred to Rule 32.1(d), Ariz. R. Crim. P., (in custody after sentence expired) in his petition below, his argument below and on review primarily focuses on a significant change in the law pursuant to Rule 32.1(g), Ariz. R. Crim. P.

<sup>7</sup>Although Woods checked the form box on the notice of post-conviction relief indicating he had raised his claim within a reasonable time after learning of it, he did not support or explain that assertion. *See* Ariz. R. Crim. P. 32.4(b)(3).

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claim previously.<sup>8</sup> And to the extent Woods attempts to raise for the first time on review a claim of ineffective assistance of appellate and Rule 32 counsel in this regard, we do not address it. *See State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7 (App. 2009) (court not required to consider claims raised for first time in reply brief); *see also State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (issues raised for first time in petition for review not addressed).

¶7 In any event, Woods has not established how the revised sentencing statute, which expressly does not apply to him, somehow constitutes a significant change in the law that entitles him to relief. *See* 1993 Ariz. Sess. Laws, ch. 255, § 99; *see also* A.R.S. § 1-246. And, although Woods referred generally to the DRA in his petition below, he did not explain whether his case had been considered under the act or if he had been denied access under it, nor does he even expressly mention it on review.

¶8 Finally, insofar as Woods contends the trial court erred by dismissing his claim without conducting an evidentiary hearing, he is incorrect. A defendant is entitled to a hearing if he presents a colorable claim for relief, that is, “he has alleged facts which, if true, would *probably* have changed the verdict or sentence.” *State v. Amaral*, 239 Ariz. 217, ¶¶ 10-11 (2016). Notably, although Woods asserts an evidentiary hearing would permit “further development of the record,” he does not mention, much less suggest, what that record would show here or why he is entitled to relief.

¶9 We thus conclude the trial court did not abuse its discretion by summarily dismissing Woods’s petition. Accordingly, although we grant review, relief is denied.

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<sup>8</sup>We similarly reject Woods’s unsupported assertion that the trial court “acknowledged in [its] order the inadequacies of the prison law libraries.”