

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DIMITRIC CHRIS SEPULVEDA,
Petitioner.

No. 2 CA-CR 2020-0133-PR
Filed September 30, 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NOT FOR PUBLICATION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
Nos. CR20171976001, CR20172320001, and CR20173335001
The Honorable Danelle B. Liwski, Judge

REVIEW GRANTED; RELIEF DENIED

Dimitric C. Sepulveda, Tucson
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.

ESPINOSA, Judge:

¶1 Dimitric Sepulveda seeks review of the trial court’s ruling summarily dismissing his notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Sepulveda has not shown such abuse here.

¶2 In three cause numbers, Sepulveda pled guilty to second-degree burglary, robbery, and attempted robbery. The trial court sentenced him to a 3.5-year prison term for burglary, a 2.5-year term for robbery, and a 1.5-year term for attempted robbery. In the sentencing minute entry, despite noting that each sentence would “commenc[e] on February 08, 2018,” the court also stated the prison term for robbery would run consecutively to his other sentences, which would be served concurrently. The court subsequently entered an amended minute entry clarifying that Sepulveda’s prison term for robbery would follow the completion of his other terms.

¶3 More than two years later, Sepulveda filed a petition for post-conviction relief, arguing, among other things, that the trial court had violated his right to be present at sentencing when it “amended” his sentence in a minute entry, and that his untimely filing should be excused. He also argued that the amendment violated his plea agreement and that he was “being held beyond the terms of [his] sentence.” The court summarily dismissed the petition as untimely in May 2020. Sepulveda did

¹ 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. Mendoza*, 249 Ariz. 180, n.1 (App. 2020).

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not timely seek review of that order. Instead, after the time to seek rehearing had passed, *see* Ariz. R. Crim. P. 33.16(a)(1), Sepulveda filed several motions, including a motion seeking leave to file an untimely motion for rehearing and an accompanying motion for rehearing.

¶4 A few days later, Sepulveda also filed a notice of post-conviction relief in which he argued that he was without fault in failing to timely seek relief because he had received “no notice” of the amended minute entry. He additionally asserted that his sentence was illegal, and that he would continue to be in custody after his sentences expired, citing Rule 33.1(c) and (d). The trial court summarily denied Sepulveda’s motions and dismissed the notice of post-conviction relief. This petition for review followed.

¶5 On review, Sepulveda again argues the trial court’s amended minute entry was improper because he was not present. He additionally suggests the sentence imposed has deprived him of earned release credits and was contrary to his plea agreement. We find no error in the trial court’s decision to summarily dismiss the proceeding. Sepulveda raised essentially the same claims in his first proceeding and, thus, he is precluded from raising them again. Ariz. R. Crim. P. 33.2(a)(2).

¶6 Additionally, although the claims Sepulveda identifies are not subject to the strict time limits of Rule 33.4(b)(3)(A), they still must be raised within a reasonable time after discovery under Rule 33.4(b)(3)(B). *See also* Ariz. R. Crim. P. 33.2(b)(1) (defendant required to “explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner”). Sepulveda has not stated when he discovered these claims, much less established that he acted promptly in raising them.

¶7 We grant review but deny relief.