

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

STEVEN YARRITO,  
*Petitioner.*

No. 2 CA-CR 2020-0157-PR  
Filed September 24, 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NOT FOR PUBLICATION  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 Yuma County  
No. S1400CR200900687  
The Honorable Mark Wayne Reeves, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Jon R. Smith, Yuma County Attorney  
By Charles Platt, Deputy County Attorney, Yuma  
*Counsel for Respondent*

Steven Yarrito, Florence  
*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 Steven Yarrito seeks review of the trial court’s ruling summarily dismissing his successive and untimely petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Yarrito has not shown such abuse here.

¶2 After a jury trial, Yarrito was convicted of two counts of sexual conduct with a minor under the age of fifteen and one count of contributing to the delinquency of a minor. He was sentenced to concurrent and consecutive prison terms totaling twenty-six years. We affirmed his convictions and sentences on appeal. *State v. Yarrito*, No. 1 CA-CR 10-0205 (Ariz. App. June 30, 2011) (mem. decision). Yarrito was denied post-conviction relief in 2014 and 2017.

¶3 In December 2018, Yarrito filed another notice of and petition for post-conviction relief, arguing he had been denied a preliminary hearing. He characterized the claim as one of newly discovered evidence pursuant to Rule 32.1(e), stating he had been “unaware” that the “denial of his preliminary hearing” had been an error. The trial court summarily dismissed the petition, and this petition for review followed.

¶4 On review, Yarrito repeats his argument, again asserting the denial of a preliminary hearing violated his constitutional rights. The trial court, however, did not err in summarily dismissing Yarrito’s petition. His

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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). 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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constitutional claim cannot be raised in this untimely and successive proceeding. Ariz. R. Crim. P. 32.1(a), 32.2(a)(3), 32.4(b)(3)(A). And Rule 32.1(e) does not encompass newly discovered legal arguments like Yarrito raises here but is instead limited to “newly discovered material facts” that “probably would have changed the judgment or sentence.” *See also State v. Serna*, 167 Ariz. 373, 374 (1991) (describing five elements of cognizable newly discovered evidence claim).

¶5           Although we grant review, relief is denied.