

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RODNEY JOHN REED,
Petitioner.

No. 2 CA-CR 2020-0160-PR
Filed September 28, 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NOT FOR PUBLICATION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 Navajo County
No. S0900CR200900941
The Honorable Robert J. Higgins, Judge

REVIEW DENIED

Rodney Reed, Florence
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Rodney Reed seeks review of the trial court’s denial of his motion to dismiss, motion to suppress, and motion to amend, all filed several years after his trial and appeal had ended. For the reasons stated below, we deny review.

¶2 After a jury trial, Reed was convicted of eleven counts of sexual conduct with a minor. The trial court sentenced him to a combination of consecutive and concurrent prison terms totaling seventy-nine years. This court affirmed Reed’s convictions and sentences on appeal. *State v. Reed*, No. 1 CA-CR 11-0422 (Ariz. App. June 19, 2012) (mem. decision). Reed sought post-conviction relief, and the trial court held an evidentiary hearing, dismissed one of the counts because it had occurred outside of Navajo County, and otherwise denied relief. This court denied relief on review. *State v. Reed*, No. 1 CA-CR 17-0778 PRPC (Ariz. App. June 14, 2018) (mem. decision).

¶3 In March 2019, Reed filed a motion to dismiss “all charges, nunc pro tunc,” based, in part, on emails that he claimed “were deliberately not disclosed to the grand jury.” Two months later, the trial court denied the motion as untimely, noting that Reed had been sentenced almost eight years prior. In July 2019, Reed filed a motion to suppress “the contents of oral communication intercepted” in violation of 18 U.S.C. § 2518, and the following month, he filed a motion to amend his previous petition for post-conviction relief. The court denied both motions. Reed then filed this petition for review, which he describes as “[p]ursuant to” Rule 32, Ariz. R. Crim. P.¹

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). “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) (“amendments apply to all cases pending on the effective date

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¶4 On review, Reed contends the trial court erred in denying his motion to dismiss, motion to suppress, and motion to amend.² Rule 32.16(a)(1) provides that a defendant may seek review of “the trial court’s final decision on a petition or a motion for rehearing, or the dismissal of a notice” within thirty days after entry of that decision.

¶5 Because the trial court denied Reed’s motion to dismiss in May 2019, his September 2019 petition for review is untimely as to that order. With regard to Reed’s motion to suppress, despite an apparent attempt to invoke Rule 32.1(e),³ it does not otherwise seem to raise a claim for relief under Rule 32.1 or challenge the validity of his convictions or sentences. Nor does that motion identify any new evidence. Thus, it cannot reasonably be construed as a notice of or petition for post-conviction relief subject to our review under Rule 32.16(a)(1).⁴ See Ariz. R. Crim. P. 32.3(b) (“If a court receives any type of application or request for relief – however titled – that challenges the validity of the defendant’s conviction or sentence following a trial, it must treat the application as a petition for post-conviction relief.”); see also *State v. Mata*, 185 Ariz. 319, 332 (1996) (“Rule[s] 32.1(a)-(g) list the types of claims over which a court has jurisdiction in post-conviction proceedings.”). And Rule 32.16(a)(1) does not provide an avenue for reviewing the denial of a motion to amend a petition for post-conviction relief that was previously denied.

¶6 We deny review.

unless a court determines that ‘applying the rule or amendment would be infeasible or work an injustice’” (quoting Ariz. Sup. Ct. Order R-19-0012)).

²Reed also contends the trial court erred in denying his motion to supplement and motions for clarification. However, no such motions or rulings appear in the record in this case.

³Reed’s motion cited Rule 32(E)(3), but no such rule exists in the Arizona Rules of Criminal Procedure. Rule 32.1(e), however, allows a defendant to file a notice of post-conviction relief on the grounds of newly discovered evidence.

⁴Even assuming Reed’s motion to suppress could be construed as a constitutional claim under Rule 32.1(a), it was untimely. See Ariz. R. Crim. P. 32.4(b)(3)(A). And to the extent Reed attempted to raise a claim of newly discovered evidence under Rule 32.1(e), it was subject to preclusion because he failed to explain in a meaningful way why he had not raised the claim in a previous notice or petition. See Ariz. R. Crim. P. 32.2(b).