

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CHASTABEAR WILLIAM PARKER,
Petitioner.

No. 2 CA-CR 2020-0195-PR
Filed November 19, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2011130043001SE
The Honorable Cynthia J. Bailey, Judge

REVIEW GRANTED; RELIEF DENIED

Chastabear Parker, Phoenix
In Propria Persona

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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 Chastabear Parker seeks review of the trial court’s ruling dismissing his notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P.¹ We will not disturb that ruling unless the court abused its discretion. *See State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Parker has not met his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement in 2012, Parker was convicted of attempted sexual conduct with a minor and two counts of sexual abuse, all dangerous crimes against children. The trial court sentenced Parker to consecutive prison terms of five years each for the sexual abuse counts and, for attempted sexual conduct, suspended the imposition of sentence and placed Parker on lifetime probation. Parker sought and was denied post-conviction relief six times. Four times, he sought review, but this court denied relief. *State v. Parker*, No. 1 CA-CR 19-0064 PRPC (Ariz. App. Sept. 26, 2019) (mem. decision); *State v. Parker*, No. 1 CA-CR 18-0672 PRPC (Ariz. App. Feb. 14, 2019) (mem. decision); *State v. Parker*, 1 CA-CR 17-0813 PRPC (Ariz. App. May 15, 2018) (mem. decision); *State v. Parker*, No. 2 CA-CR 2016-0177-PR (Ariz. App. June 7, 2016) (mem. decision).

¶3 In March 2019, Parker initiated his seventh proceeding for post-conviction relief, filing both a notice and petition, as well as a “Supporting Brief,” on the same day. He asserted there had been an

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. 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.’” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) (quoting Ariz. Sup. Ct. Order R-19-0012). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *Id.*

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“erroneous judicial expansion” of A.R.S. § 13-3012(9).² He reasoned that this judicial expansion gave the courts “unlawful[]” jurisdiction over his case and constituted newly discovered material facts requiring the trial court to vacate his convictions and sentences. Parker further asserted that, because the victim’s father acted as the state’s agent when consenting to a confrontation call with Parker, the consent was void and the call violated his rights of due process and against self-incrimination.

¶4 In April 2019, the trial court summarily dismissed Parker’s notice, petition, and brief, which it deemed a single notice of post-conviction relief. As to Parker’s jurisdiction claim, the court explained that, as used in Rule 33.1(b), subject matter jurisdiction refers to the power to hear a type of case and article VI, § 14(4) of the Arizona Constitution gave the court jurisdiction in Parker’s case because it involved a felony criminal offense. The court thus concluded, even assuming § 13-3012(9) applied, “jurisdiction still exists.” The court further reasoned that Parker’s constitutional arguments regarding the judicial expansion of § 13-3012(9) and the confrontation call arose under Rule 33.1(a) and were precluded because they had been addressed in prior post-conviction proceedings. To the extent Parker was raising a new claim, the court determined that it too was precluded in this successive proceeding. Finally, as to Parker’s claim of newly discovered material facts under Rule 33.1(e), the court determined that Parker had failed to state a claim for which relief can be granted because he had not “adequately explain[ed] the reasons for [the claim’s] untimely assertion.”

¶5 Parker filed a motion for rehearing, which the trial court denied. He then filed a “Notice of Intent to file ‘Petition for Review,’” in which he requested an additional thirty days to file a petition for review. The trial court, however, took no action on the notice, reasoning that it was “intended for and part of a proceeding in the Arizona Court of Appeals” and “the submission to [the trial court] was solely for copying purposes,

²Section 13-3012(9) provides, as an exception to eavesdropping and intercepting communications, “The interception of any wire, electronic or oral communication by any person, if the interception is effected with the consent of a party to the communication or a person who is present during the communication”

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rather than the seeking of affirmative relief.”³ Because Parker did not file his petition for review within thirty days of the trial court’s ruling dismissing his notice, this court dismissed the matter on review. Parker filed with the trial court a motion seeking leave to file a delayed petition for review. The trial court granted that request. This petition for review followed.⁴

¶6 On review, Parker reasserts his claim that the trial court lacked jurisdiction over his case based on the purported judicial expansion of § 13-3012(9). He argues that the court erred in dismissing this claim because “a question regarding the court’s jurisdiction[] may be raised at any time” and “[t]he issue of successive post-conviction relief is not a bar.”

¶7 Parker is correct that an issue concerning subject matter jurisdiction can be raised at any time. *See State v. Turner*, 239 Ariz. 390, ¶ 6 (App. 2016); *see also* Ariz. R. Crim. P. 33.1(b), 33.2(a), 33.4(b)(3)(B). However, he miscomprehends the concept of subject matter jurisdiction. As the trial court correctly noted, subject matter jurisdiction is “the power of a court to hear and determine a controversy.” *State v. Chacon*, 221 Ariz. 523, ¶ 5 (App. 2009) (quoting *Marks v. LaBerge*, 146 Ariz. 12, 15 (App. 1985)). And the court here had subject matter jurisdiction over Parker’s case. *See* Ariz. Const. art. VI, § 14(4); A.R.S. §§ 12-123(A), 13-1001(C), 13-1404(C), 13-1405(B). Parker’s contention that the judiciary improperly expanded the scope of § 13-3012(9), even assuming he is correct, has no effect on the court’s jurisdiction. The court thus did not abuse its discretion in summarily dismissing this claim.

¶8 Parker also repeats his claims of invalid consent, due process violations, and self-incrimination based on the confrontation call.⁵ The trial

³Rule 33.16(a)(4) directs the trial court to decide whether a party is entitled to an extension of time to file a petition for review or to file a delayed petition.

⁴While he sought review of the trial court’s April 2019 rulings, Parker filed two more petitions for post-conviction relief.

⁵Parker does not appear to reassert his claim of newly discovered material facts on review. We therefore do not address it. *See* Ariz. R. Crim. P. 33.16(c)(2)(B) (petition for review must contain “issues the trial court decided that the defendant is presenting for appellate review”); *see also State*

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court clearly identified Parker's claims and correctly resolved them. 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").

¶9 Accordingly, we grant review but deny relief.

v. Bolton, 182 Ariz. 290, 298 (1995) (failure to argue claim constitutes waiver of claim).