

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RICKY RENE EVANS,  
*Petitioner.*

No. 2 CA-CR 2020-0200-PR  
Filed November 20, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2007108406001DT  
The Honorable George H. Foster Jr., Judge

**REVIEW GRANTED; RELIEF DENIED**

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Ricky R. Evans, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

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

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BREARCLIFFE, Judge:

¶1 Ricky Evans seeks review of the trial court’s ruling dismissing his notice of post-conviction relief filed pursuant to Rule 33, 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). Evans has not shown such abuse here.

¶2 Evans pleaded guilty to sexual conduct with a minor and two counts of attempted child molestation. The trial court sentenced him to a twenty-five-year prison term for sexual conduct and, for both counts of attempted child molestation, suspended the imposition of sentence and placed Evans on lifetime probation. Evans filed a notice of post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no “claims for relief to raise in post-conviction relief proceedings.” The proceeding was dismissed in February 2009 after Evans did not file a pro se petition.

¶3 In September 2019, Evans filed a petition for writ of habeas corpus, in which he claimed former A.R.S. § 13-604<sup>2</sup> “was recognized as

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<sup>1</sup> 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.*

<sup>2</sup> Former § 13-604 governed the sentencing of dangerous and repetitive offenders. *See* 2007 Ariz. Sess. Laws, ch. 248, § 1. Evans was not sentenced under that statute, but was instead sentenced pursuant to former

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unconstitutional in its entirety” and, thus, his “conviction under it cannot be a legal cause of imprisonment.” Based on the same argument, he also claimed his “legal process” had been “fraudulent and fatally defective” and the trial court lacked subject matter jurisdiction over him. Treating Evans’s filing as a notice of post-conviction relief, *see* Ariz. R. Crim. P. 33.3(b), the trial court summarily dismissed the proceeding. This petition for review followed.

¶4 On review, Evans repeats his claim that the purported unconstitutionality of former § 13-604<sup>3</sup> deprived the trial court of subject matter jurisdiction. Evans is correct that a claim that the court lacked subject matter jurisdiction may be raised at any time. Ariz. R. Crim. P. 33.1(b), 33.2(b), 33.4(b)(3)(B); *State v. Turner*, 239 Ariz. 390, ¶ 6 (App. 2016). But his claim nonetheless fails for several reasons. First, he has not demonstrated the statutes he has identified are unconstitutional. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim). Second, even if they were and that fact rendered the charging document somehow defective, a deficient charging instrument does not deprive a court of subject matter jurisdiction. *State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010).

¶5 We grant review but deny relief.

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§ 13-604.01, prescribing the sentences for dangerous crimes against children. *See id.* § 2.

<sup>3</sup>For the first time on review, Evans also identifies as unconstitutional former A.R.S. §§ 13-702.01 and 13-702.02, which governed sentence enhancement and mitigation and multiple offenses not committed on the same occasion. *See* 2006 Ariz. Sess. Laws, ch. 148, § 2; 1999 Ariz. Sess. Laws, ch. 261, § 10. Evans’s sentence involved neither statute. In any event, we do not address claims first raised on review. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980)