

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RUBEN RAY TELLEZ JR.,  
*Petitioner.*

No. 2 CA-CR 2020-0214-PR  
Filed December 8, 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NOT FOR PUBLICATION  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. CR2010161784001SE  
The Honorable Steven P. Lynch, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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Ruben R. Tellez, 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 Ruben Tellez Jr. seeks review of the trial court’s ruling dismissing his petition for writ of habeas corpus, which the court treated as a notice of post-conviction relief pursuant to Rule 33.3(b), 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). Tellez has not shown such abuse here.

¶2 In March 2011, Tellez pleaded guilty to armed robbery and two counts of kidnapping. Pursuant to the stipulated sentencing range set forth in the plea agreement, the trial court imposed consecutive sentences totaling thirty-four years, to be followed by a four-year term of probation. In 2016, the court summarily dismissed Tellez’s first two notices of post-conviction relief, from which he apparently did not seek review.

¶3 In October 2019, three years after the dismissal of his second post-conviction proceeding, Tellez filed a petition for writ of habeas corpus, which as previously noted, the trial court treated as a notice of post-conviction relief. He argued he had been “taken into custody”<sup>2</sup> for

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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>The record does not support Tellez’s assertion on review that § 13-702.01 was cited in the indictment, although it was cited in the plea agreement and the sentencing minute entry.

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violating former A.R.S. § 13-702.01,<sup>3</sup> which he asserted was “recognized as unconstitutional” when it was repealed, thereby rendering his convictions and sentences illegal. The court summarily dismissed the proceeding, and this petition for review followed.

¶4 In its ruling dismissing Tellez’s claim below, the trial court correctly noted that he had failed to provide any authority to support his argument that § 13-702.01 was found to be unconstitutional when it was repealed, a claim it determined he had raised pursuant to Rule 33.1(a). The court also concluded that Tellez had “fail[ed] to explain why citation to this provision invalidated his convictions or sentences,” and correctly noted that he had waived his claim by agreeing in his plea agreement to the sentencing range imposed. *See* Ariz. R. Crim. P. 33.2(a)(1) (defendant precluded from raising claim waived by pleading guilty); *State v. Espinosa*, 200 Ariz. 503, ¶¶ 8, 10 (App. 2001). Finally, it appears the court also found Tellez was precluded from raising a claim based on Rule 33.1(a) in a successive and untimely proceeding like this one.

¶5 On review, Tellez argues the trial court erred by treating his petition for writ of habeas corpus as a notice of post-conviction relief. He asserts he is not attacking his convictions or sentences, but is instead “point[ing] out the fact that a conviction under an unconstitutional and void statute ‘cannot be a legal cause of imprisonment.’” We disagree with Tellez’s assertion that he is not actually challenging his convictions and sentences and that the court thus erred by treating his filing as one raised under Rule 33. To the contrary, we conclude the court properly relied on the clear language in Rule 33.3(b) to treat Tellez’s filing as a Rule 33 proceeding. *See* Ariz. R. Crim. P. 33.3(b) (“If a court receives any type of application or request for relief . . . that challenges the validity of . . . a sentence following entry of a plea . . . it must treat the application as a petition for post-conviction relief.”).

¶6 In addition, expanding on the argument raised in his petition below, Tellez asserts for the first time on review that the trial court lacked subject matter jurisdiction over him because his convictions and sentences

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<sup>3</sup>Significant portions of Arizona’s criminal sentencing code have been renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective “from and after December 31, 2008.” *Id.* § 120. As part of those changes, § 13-702.01 was repealed, 2008 Ariz. Sess. Laws, ch. 301, § 25, and its substantive provisions were modified and moved to become parts of A.R.S. §§ 13-702 and 13-703, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 24, 28.

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were based on an unconstitutional statute. However, we do not address issues raised for the first time on review. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980).

¶7 Tellez also repeats his wholly unsupported claim that former § 13-702.01 “was recognized as unconstitutional by the judicial branch” when it was repealed. Although the trial court deemed Tellez’s claim as one based on Rule 33.1(a), it was also arguably cognizable as a claim under Rule 33.1(c) that his sentence was not authorized by law or by the plea agreement, either such claim was precluded and time-barred under the former rules. *See* former Ariz. R. Crim. P. 32.2(b), 32.4. And, although Tellez’s claim based on Rule 33.1(a) remains precluded and time-barred under the current rules, claims based on Rule 33.1(c) are no longer automatically precluded, although they may still be time-barred. *See* Ariz. R. Crim. P. 33.2(b)(1) (“[W]hen a defendant raises a claim that falls under Rule 33.1(b) through (h) in a successive or untimely post-conviction notice, the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner.”). However, because Tellez failed to provide any reason for failing to raise his claim in a previous notice or petition or for not raising it in a timely manner, a finding the court essentially made and which the record supports, the court correctly dismissed his claim.

¶8 Moreover, Tellez has failed on review to develop any argument explaining why he believes the trial court’s ruling is legally or factually incorrect, and he has not cited any authority supporting his claim that his convictions and sentences were unconstitutional or illegal. *See* Ariz. R. Crim. P. 33.16(c)(2)(D) (petition for review must contain “reasons why the appellate court should grant the petition”). In the absence of any developed argument that the court erred in rejecting his claims below, we deny relief. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim on review).

¶9 Accordingly, we grant review but deny relief.