

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JESSIE WILDER DARRIN,
Petitioner.

No. 2 CA-CR 2020-0216-PR
Filed December 8, 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NOT FOR PUBLICATION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. CR2016152809001DT
The Honorable Patricia Ann Starr, Judge

REVIEW GRANTED; RELIEF DENIED

Jessie W. Darrin, 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 Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Petitioner Jessie Darrin seeks review of the trial court’s order dismissing his petition for post-conviction relief, filed pursuant to Rule 33, Ariz. R. Crim. P.¹ “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Darrin has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Darrin was convicted of aggravated driving while under the influence (DUI) and aggravated driving with an alcohol concentration of .08 or more. The trial court sentenced him to enhanced, concurrent sentences totaling seven years’ imprisonment. Darrin thereafter sought post-conviction relief, and appointed counsel filed a notice stating that he had reviewed the record and was “unable to find any colorable claims for relief.” In a pro se supplemental petition, however, Darrin argued he had received ineffective assistance of counsel in relation to his plea. The trial court summarily dismissed the petition on February 4, 2019.

¶3 On February 21, Darrin filed a motion for rehearing and then a request for preparation of a post-conviction record. The trial court denied the motion for preparation, noting that Darrin had no post-conviction proceeding pending. Darrin then filed a motion for status, again asking the court to grant his motion for rehearing. He then filed a series of documents

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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purporting to be supplemental petitions. The court denied the motion for rehearing as untimely. It further struck the supplemental petitions and directed Darrin to file either a proper motion or petition by July 1.

¶4 Darrin then filed a “Motion to Consider (Motion for Rehearing)” and several more “Supplemental Petition” documents. On June 5, the trial court denied the motion and dismissed the supplemental petitions, concluding Darrin had failed to comply with “the page limits and other requirements” set forth in its previous order. On June 12, the court denied another “motion to consider,” in which Darrin sought rehearing.

¶5 In July, Darrin filed another supplemental petition, and the trial court deemed it “a new Notice of Post-Conviction Relief.” Darrin repeated his claims of ineffective assistance of counsel from his first petition, and argued he was actually innocent, the court lacked jurisdiction, and newly discovered evidence entitled him to relief. The court summarily dismissed the petition on August 14, 2019, determining that Darrin’s claims of ineffective assistance were untimely and precluded and that his claims of newly discovered evidence did “not present any new facts that the Court did not consider in his first Rule 32 proceeding.”

¶6 On review, Darrin asks that this court review the decisions entered by the trial court in February 2019, June 2019, and August 2019. His petition, however, was untimely as to the rulings in his first proceeding. *See* Ariz. R. Crim. P. 33.16(a)(1). We therefore address only the court’s August ruling, issued in Darrin’s second proceeding.

¶7 Darrin’s arguments on review primarily arise under Rule 33.1(a), including his claims of ineffective assistance of counsel and various claims related to prosecutorial misconduct, the factual basis of his plea, breach of his plea agreement, constitutional error in sentencing, and error by the trial court.² As the court correctly determined, these claims cannot be raised in an untimely and successive proceeding such as this one. *See*

²Darrin does not adequately address on review his claims of newly discovered evidence and actual innocence. We therefore do not address them. *See* Ariz. R. Crim. P. 33.16(c)(2)(D); *State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (claim waived when defendant did not “develop the argument in any meaningful way” on review); *State v. Rodriguez*, 227 Ariz. 58, n.4 (App. 2010) (declining to address argument not raised in petition for review).

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Ariz. R. Crim. P. 33.2(a)(3), 33.4(b)(3)(A). The court therefore did not abuse its discretion in dismissing the petition.

¶8 Darrin also argues the trial court lacked subject matter jurisdiction. Such a claim is not precluded in a successive proceeding, Ariz. R. Crim. P. 33.2(b)(1), and may be raised in an untimely proceeding, so long as it is brought “within a reasonable time after discovering the basis for the claim,” Ariz. R. Crim. P. 33.4(b)(3)(B). But Darrin’s claim, to the extent we understand it, although couched as one of subject matter jurisdiction, relates instead to the sufficiency of the factual basis for his guilty plea. Darrin raised claims relating to this issue in his first proceeding, and to the extent his claim now varies, such a claim could have been raised in that proceeding. It is therefore precluded. *See* Ariz. R. Crim. P. 33.2(a)(2), (b)(1).

¶9 We grant the petition for review, but we deny relief.