

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

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WARREN FRANK STAFFORD,  
*Petitioner/Appellant,*

*v.*

DAVID SHINN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,  
*Respondent/Appellee.*

No. 2 CA-HC 2020-0001  
Filed September 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NOT FOR PUBLICATION  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. Civ. App. P. 28(a)(1), (f).*

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Appeal from the Superior Court in Pima County  
No. CR20003420  
The Honorable Paul E. Tang, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Warren F. Stafford, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Eppich and Judge Espinosa concurred.

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ECKERSTROM, Judge:

¶1 Petitioner Warren Stafford challenges the trial court's order denying relief from his 2002 convictions for sexual abuse of a minor and six counts of sexual conduct with a minor. Although Stafford called the petition he filed below a petition for writ of habeas corpus, the court correctly characterized and processed it as Stafford's fourth petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Because Stafford has not established the court abused its discretion in dismissing the petition, we grant Stafford's petition for review but deny relief. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015).

¶2 Stafford was convicted of these offenses after a bench trial and sentenced to presumptive, consecutive prison terms totaling 125 years. This court affirmed his convictions and the sentences on appeal. *State v. Stafford*, No. 2 CA-CR 2002-0079 (Ariz. App. July 10, 2003) (mem. decision). Stafford then sought post-conviction relief in three proceedings. The trial court denied relief in all three and Stafford filed petitions for review in two, which we granted but denied relief. *State v. Stafford*, No. 2 CA-CR 2015-0150-PR (Ariz. App. July 7, 2015) (mem. decision); *State v. Stafford*, No. 2 CA-CR 2006-0295-PR (Ariz. App. Mar. 8, 2007) (mem. decision). In March 2019, Stafford filed a document he entitled as a petition for writ of habeas corpus, which the trial court correctly treated as a notice and petition for post-conviction relief, relying on Rule 32.3(b). Stafford claimed the convictions were based on unconstitutional statutes; the convictions were obtained as a result of a fraudulent indictment because the state knew the statutes were unconstitutional; and, the trial court lacked subject-matter jurisdiction because the statutes were unconstitutional, although he seems to be referring to sentencing statutes, not the statutes upon which the offenses were based. In his reply to the state's response to the petition, he raised claims challenging his sentences based on *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and its progeny.

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¶3 In its February 2020 ruling, the trial court reviewed the history of this matter, listing the claims Stafford previously had raised, and identified the claims he was raising in his current petition. As the court noted, effective January 1, 2020, our supreme court amended the post-conviction relief rules, which 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,” Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). *See also State v. Mendoza*, \_\_\_ Ariz. \_\_\_, n.1, 467 P.3d 1120, 1122 n.1 (App. 2020). Applying the recently amended rules, the court correctly found Stafford was precluded from obtaining relief based on the first two claims, which fall under Rule 32.1(a)(3), Stafford having waived them by failing to raise them in previous proceedings. *See Ariz. R. Crim. P. 32.2(a)(3)*.

¶4 The trial court correctly noted that under amended Rule 32.1(b) and Rule 32.2(b), a claim of lack of subject-matter jurisdiction is not subject to preclusion under Rule 32.2(a)(3). As the court pointed out, however, Rule 32.2(b) requires a defendant to “explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner.” Claims that fall within Rule 32.1(b) through (h) are not subject to the time limits for claims under Rule 32.1(a), but a defendant must raise such a claim “within a reasonable time after discovering the basis of the claim,” Ariz. R. Crim. P. 32.4(b)(3)(B). The court correctly found this claim barred because Stafford neither explained why he failed to raise this claim in the multiple proceedings following his convictions, nor did he show he was raising the claim in a timely manner.<sup>1</sup> Moreover, although Stafford characterizes his claim as raising a lack of subject-matter jurisdiction, it is more in the nature of a challenge to the indictment and the constitutionality of the prosecution and the convictions that resulted from this allegedly defective process. *See State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010) (deficient charging instrument does not deprive a court of subject-matter jurisdiction). In addition, as the state pointed out in its

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<sup>1</sup>In the petition filed below, Stafford stated that he had not raised the claims previously because he had just discovered he had been indicted, tried, convicted and sentenced under a statute found to be unconstitutional. He had asserted earlier in his petition that certain statutes had been “recognized as unconstitutional in an unreported Arizona case,” which he did not identify. This, together with the fact that he claims the state knowingly prosecuted him under unconstitutional statutes, is not an explanation for his failure to raise the claims on appeal or in prior post-conviction proceedings.

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response to the petition filed below, the statutes Stafford appeared to be claiming were unconstitutional were sentencing statutes, not the statutes defining his offenses. As such, the claim is cognizable under Rule 32.1(a) and subject to the preclusive effect of Rule 32.2(a)(3).

¶5 Although unclear from his petition for review, to the extent Stafford challenges the trial court's denial of relief based on claims and arguments raised for the first time in his reply to the state's response to his petition, the court did not abuse its discretion in rejecting them as well. In addition to the fact that the court was not required to address the claims, *see State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7 (App. 2009), the court correctly found the claims precluded. And to the extent the claims were purportedly based on changes in statutes defining dangerous crimes against children, *see* former A.R.S. § 13-604.01, renumbered and amended as A.R.S. § 13-705, 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29, the court impliedly found these statutes inapplicable to Stafford, who committed his offenses and was sentenced before any changes. And, to the extent Stafford argued the statutes applicable to him were unconstitutional or his sentences violated the Eighth Amendment, as applied in *State v. Davis*, 206 Ariz. 377 (2003), the court correctly rejected these claims on the merits.

¶6 Stafford has failed to sustain his burden of establishing the trial court abused its discretion in dismissing his petition for post-conviction relief. We grant the petition for review but deny relief.