

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAVID ROBERT RUDERMAN,
Petitioner.

No. 2 CA-CR 2020-0237-PR
Filed January 12, 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NOT FOR PUBLICATION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. CR2005104872001SE
The Honorable Michael J. Herrod, Judge

REVIEW GRANTED; RELIEF DENIED

David R. Ruderman, Florence
In Propria Persona

STATE v. RUDERMAN
Decision of the Court

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Espinosa and Vice Chief Judge Staring concurred.

ECKERSTROM, Judge:

¶1 David Ruderman seeks review of the trial court's ruling summarily dismissing his petition for writ of habeas corpus, which the trial court deemed a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ See Ariz. R. Crim. P. 32.3(b). We will not disturb that order unless the court abused its discretion. See *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Ruderman has not shown such abuse here.

¶2 Ruderman was convicted after a jury trial of sexual conduct with a minor and sentenced to life in prison. We affirmed his conviction and sentence on appeal. *State v. Ruderman*, No. 1 CA-CR 05-1167 (Ariz. App. Nov. 14, 2006) (mem. decision). Ruderman sought and was denied post-conviction relief in 2007.

¶3 In August 2019, Ruderman filed a petition for writ of habeas corpus arguing that former A.R.S. § 13-604.01² "was held unconstitutional in its entirety" rendering his indictment "void for want of subject matter jurisdiction." The trial court, treating Ruderman's petition as a petition for post-conviction relief, summarily dismissed the proceeding. This petition for review followed.

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.*

² Former § 13-604.01 governed sentencing for dangerous crimes against children at the time of Ruderman's conviction. See 2007 Ariz. Sess. Laws, ch. 248, § 2.

STATE v. RUDERMAN
Decision of the Court

¶4 On review, Ruderman repeats his claim. Ruderman is correct that a claim the court lacked subject matter jurisdiction may be raised at any time. Ariz. R. Crim. P. 32.1(b), 32.2(b), 32.4(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 statute he has identified is unconstitutional, claiming only that it was declared unconstitutional in an “unreported Arizona Supreme Court case.” See *State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim). Second, even if it 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). The trial court did not err in summarily rejecting this claim.

¶5 We grant review but deny relief.