

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GEARY WAYNE WALTON,
Petitioner.

No. 2 CA-CR 2020-0240-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NOT FOR PUBLICATION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. CR1987009953
The Honorable Sherry K. Stephens, Judge

REVIEW GRANTED; RELIEF DENIED

Geary W. Walton, Florence
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Geary Walton seeks review of the trial court’s ruling dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb that ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Walton has not met his burden of establishing such abuse here.

¶2 The factual and procedural history of this case – including at least fifteen prior petitions for review – is set forth in *State v. Walton*, No. 1 CA-CR 14-0354 PRPC (Ariz. App. June 30, 2016) (mem. decision), and need not be repeated here. In April 2017, Walton filed a motion for appointment of counsel and psychiatric testing, alleging that a head injury and post-traumatic stress disorder (PTSD) caused him to commit the offenses for which he was convicted. The trial court granted Walton’s request for counsel for the sole purpose of investigating his claim and determining whether it warranted the filing of a petition for post-conviction relief. Counsel thereafter filed a notice, stating he had “reviewed the transcripts and all relevant documents in this matter” and had been “unable to discern any colorable claim.”

¶3 The trial court gave Walton leave to file a pro se petition, which he did, along with various supplements. Walton asserted a claim of newly discovered material facts based on his PTSD diagnosis, and he also raised other issues including that an expert witness’s trial testimony on

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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Child Sexual Abuse Accommodation Syndrome was improper; his counsel rendered ineffective assistance; *Crawford v. Washington*, 541 U.S. 36 (2004), *Blakely v. Washington*, 542 U.S. 296 (2004), and *Webb v. Lewis*, 44 F.3d 1387 (9th Cir. 1994), constituted significant changes in the law applicable to his case; the court lacked subject matter jurisdiction; and he was actually innocent of the charges.

¶4 In September 2019, the trial court summarily dismissed Walton’s petition, which it found to be his twenty-fourth such filing. The court concluded that Walton had not demonstrated “newly discovered material facts to support his claim that he had PTSD” because “[t]he only evidence provided . . . was that he had PTSD in 2017 while in prison” based on “self-reported symptoms.” The court also determined that Walton had “failed to raise a colorable claim of actual innocence” and that it had subject matter jurisdiction over the case. The court found the remaining claims precluded because they were previously adjudicated in other post-conviction proceedings. Walton filed a motion for rehearing, which the court also denied. This petition for review followed.

¶5 On review, Walton reasserts several of the claims raised below. However, he points to no specific error in the trial court’s ruling, instead, generally arguing that the court “abused its discretion when it denied and dismissed” his petition.

¶6 “If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition.” Ariz. R. Crim. P. 32.11(a). Any claim that Walton raised or could have raised on appeal or in a previous proceeding for post-conviction relief is precluded. Ariz. R. Crim. P. 32.2(a); *see also* Ariz. R. Crim. P. 32.2(b) (listing exceptions). The court therefore did not abuse its discretion in summarily dismissing any such claims. *See Roseberry*, 237 Ariz. 507, ¶ 7.

¶7 Even assuming Walton’s claims of newly discovered material facts and actual innocence were not subject to preclusion, the trial court did not err in summarily dismissing them. *See id.* Both claims appear to be premised on his assertion that he was suffering from PTSD at the time of the offenses. But as the court pointed out, he offered no proof to support his assertion. Although the record contains evidence that Walton was diagnosed with PTSD in September 2017, Walton failed to establish that he was suffering from the disorder at the time of the offenses. *See State v.*

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Rosario, 195 Ariz. 264, ¶ 23 (App. 1999) (defendant must offer more than “mere speculation” to establish colorable claim).

¶8 Likewise, even assuming Walton’s claim of a lack of subject matter jurisdiction is not precluded, the trial court did not abuse its discretion in summarily dismissing it. *See Roseberry*, 237 Ariz. 507, ¶ 7. Subject matter jurisdiction is the power to hear and determine a controversy, *State v. Bryant*, 219 Ariz. 514, ¶ 14 (App. 2008), and article VI, § 14(4) of the Arizona Constitution vests superior courts with jurisdiction over “[c]riminal cases amounting to felony.” The court had subject matter jurisdiction to hear Walton’s case.² *See, e.g.*, A.R.S. §§ 13-1001(C), 13-1404(C) (attempted sexual abuse is felony); 13-1405(B) (sexual conduct is felony).³ Finally, to the extent Walton is asserting new claims for the first time on review, we do not consider them. *See Ariz. R. Crim. P. 32.16(c)(2)(B)* (appellate court reviews issues presented to trial court); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (appellate court will not address arguments asserted for first time in petition for review).

¶9 Accordingly, we grant review but deny relief.

²Walton suggests “the trial court lacked subject matter jurisdiction in this case for lack of a valid complaint.” A deficient charging instrument, however, does not deprive a court of subject matter jurisdiction. *See State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010).

³Absent material change since the relevant dates, we cite the current version of a statute.