

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

LARRY DONNELL DUNLAP,  
*Petitioner.*

No. 2 CA-CR 2021-0030-PR  
Filed May 26, 2021

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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NOT FOR PUBLICATION  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 Pima County  
No. CR052453001  
The Honorable James E. Marner, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Larry Donnell Dunlap, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

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

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V Á S Q U E Z, Chief Judge:

¶1 Larry Dunlap seeks review of the trial court’s ruling summarily dismissing his successive notice of and petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., and the court’s order denying his motion to supplement that petition. We will not disturb those orders unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Dunlap has not shown such abuse here.

¶2 Based on acts occurring in 1995, Dunlap was convicted after a jury trial of one count of sexual abuse and five counts of child molestation. His first appeal resulted in his resentencing on four of the child molestation counts, *State v. Dunlap*, No. 2 CA-CR 96-0643 (Ariz. App. Apr. 21, 1998) (mem. decision), at which the trial court imposed consecutive seventeen-year prison terms on each count, for an aggregate prison term of 69.5 years, *State v. Dunlap*, No. 2 CA-CR 99-0084 (Ariz. App. Mar. 30, 2000) (mem. decision). He has since sought and been denied post-conviction relief on numerous occasions. *See State v. Dunlap*, No. 2 CA-CR 2020-0112-PR (Ariz. App. July 6, 2020) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2019-0271-PR (Ariz. App. May 11, 2020) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2016-0209-PR (Ariz. App. Aug. 17, 2016) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2013-0215-PR (Ariz. App. Oct. 7, 2013) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2011-0196-PR (Ariz. App. Oct. 19, 2011) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2004-0276-PR (Ariz. App. Feb. 11, 2005) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2002-0215-PR (Ariz. App. Sept. 11, 2003) (mem. decision).

¶3 In December 2020, Dunlap filed a notice of and petition for post-conviction relief arguing that, pursuant to *State v. Tarango*, 185 Ariz. 208 (1996), he had improperly been denied parole hearings and was entitled to forty-three years of earned release credits on his prison terms. He identified as the basis of his claim Rule 32.1(a), (c), (d), (e), and (g). The trial court summarily dismissed the petition, declining to reach Dunlap’s claim based on *Tarango* because Dunlap “did not raise this issue in a timely

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manner” and had “failed to provide . . . sufficient reasons why he did not raise the claim earlier.” Later, the court noted that, just after its ruling, Dunlap had submitted a motion seeking to supplement the petition. The court denied the motion, stating that “even after considering [its] contents” the court’s earlier “ruling [wa]s proper.” This petition for review followed.

¶4 On review, Dunlap first argues the trial court improperly “side stepp[ed]” his claim based on *Tarango* by concluding he had not timely raised it and explains, for the first time, that he only learned of his claim in November 2020 when a counselor informed him he was entitled to relief under that case. Insofar as Dunlap challenges the constitutionality of his sentence, the claim is not raisable under Rule 32.1(a) because Dunlap has waived it by failing to raise it on appeal following his resentencing. *See* Ariz. R. Crim. P. 32.2(a)(3). And, because *Tarango* was decided before Dunlap was resentenced, his claim is not cognizable under Rule 32.1(e) or (g).

¶5 And, to the extent Dunlap’s claim is raisable under Rule 32.1(c) or (d), he was required to raise it “within a reasonable time after discovering” its basis. Ariz. R. Crim. P. 32.4(b)(3)(B). To that end, he was required to explain in his notice “the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner.” Ariz. R. Crim. P. 32.2(b). As the trial court noted, he failed to do so, and his attempt to do so for the first time on review comes too late. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (court of appeals does not address issues raised for first time in petition for review).

¶6 Even if Dunlap had timely raised the claim, however, *Tarango* does not entitle him to relief. In *Tarango*, our supreme court determined that, if the state sought to sentence a drug offender as a repetitive offender, a special sentencing provision precluding early release for drug offenders did not apply. 185 Ariz. at 209-10. But Dunlap was not sentenced as a repetitive offender, and he is ineligible for early release under the version of A.R.S. § 13-604.01 governing his sentences for dangerous crimes against children.<sup>1</sup> *See* 1994 Ariz. Sess. Laws, ch. 236, § 2.

¶7 Insofar as Dunlap asserts the trial court erred by declining to appoint him counsel, he was not entitled to counsel in this successive

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<sup>1</sup> Although Dunlap refers to his eligibility for “parole,” Arizona largely abolished parole for crimes committed after January 1, 1994. *See* A.R.S. § 41-1604.09(I)(1); *State v. Randles*, 235 Ariz. 547, ¶ 5 (App. 2014).

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proceeding, Ariz. R. Crim. P. 32.5(a), and he has developed no argument that the court abused its discretion in declining his request. Thus, we decline to address this issue further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (defendant waives claim on review where he fails to provide relevant authority or meaningfully develop argument). Additionally, although Dunlap suggests the state has confessed error by declining to file a response to his petition for review, we decline to find a confession of error here. *See State v. Healer*, 246 Ariz. 441, n.5 (App. 2019) (court has discretion whether to apply waiver principles).

¶8           We grant review but deny relief.