

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

ARTHUR T. THOMAS,
Petitioner/Appellant,

v.

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

No. 2 CA-HC 2020-0009
Filed February 5, 2021

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NOT FOR PUBLICATION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).

Appeal from the Superior Court in Pinal County
No. S1100CV202001356
The Honorable Barbara A. Hazel, Judge Pro Tempore

AFFIRMED

Arthur T. Thomas, Florence
In Propria Persona

MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 Arthur Thomas challenges the trial court’s order denying his petition for a writ of habeas corpus. For the following reasons, we affirm.

¶2 Thomas, an inmate with the Arizona Department of Corrections, filed a petition for a writ of habeas corpus in September 2020. He argued he was “illegally confined and restrained of his liberty because” he had been “charged with being ‘[i]n violation of A.R.S. § 13-604.01,’” which he asserted had been “recognized as unconstitutional . . . and repealed in 2008.” Thomas reasoned that “if a statute pursuant to which a defendant is indicted is ‘repugnant to the constitution,’ then the ‘prosecution against him is a nullity.’” The trial court denied the petition, concluding that “no legal basis exists to grant the requested relief.”

¶3 On appeal, Thomas reasserts his claim. He contends that because he had been indicted under § 13-604.01, “the unconstitutional statute rendered the indictment unconstitutional by way of repugnancy, and an indictment which is repugnant to the Constitution could not give the trial court jurisdiction over the subject matter of the action.” He also points out that, in its order, the court “did not dispute the fact that . . . § 13-604.01 was recognized as unconstitutional and repealed.”

¶4 Generally, “[i]n Arizona, the writ of habeas corpus may be used only to review matters affecting a court’s jurisdiction.” *In re Oppenheimer*, 95 Ariz. 292, 297 (1964). Even assuming Thomas is correct that his indictment was flawed, however, a deficient charging instrument does not deprive a court of subject-matter jurisdiction. *See State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010). The trial court therefore did not err in concluding Thomas was not entitled to relief. *See State v. Cowles*, 207 Ariz. 8, ¶ 3 (App. 2004) (appellate court reviews denial of petition for writ of habeas corpus for abuse of discretion).

¶5 Accordingly, we affirm the order denying Thomas’s petition for a writ of habeas corpus.