

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

NORMA KAY,
Petitioner.

No. 2 CA-CR 2021-0109-PR
Filed March 25, 2022

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201802177
The Honorable Jason R. Holmberg, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Geraldine L. Roll, Deputy County Attorney, Florence
Counsel for Respondent

Norma Kay, Florence
In Propria Persona

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MEMORANDUM DECISION

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

STARING, Vice Chief Judge:

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

¶2 After a bench trial, Kay was convicted of two counts of sexual conduct with a minor under fifteen and sentenced to consecutive, thirteen-year prison terms. We affirmed her convictions and sentences on appeal. *State v. Kay*, No. 2 CA-CR 2019-0171 (Ariz. App. June 26, 2020) (mem. decision). She sought and was denied post-conviction relief but did not seek review of that ruling.

¶3 In October 2021, Kay filed a petition for writ of habeas corpus arguing the trial court lacked subject matter jurisdiction over her because a sentencing statute listed in her indictment had been found unconstitutional. The assigned judge designated the filing as a petition for post-conviction relief and transferred it to the sentencing judge. *See* Ariz. R. Crim. P. 32.3(b). The court then summarily dismissed the petition, finding Kay’s argument waived. This petition for review followed.

¶4 On review, Kay repeats her argument and asserts that, because it implicates the trial court’s subject matter jurisdiction, it cannot be waived. *See, e.g., State v. Municipal Court*, 124 Ariz. 543, 545 (App. 1979). “Subject matter jurisdiction is ‘the power to hear and determine cases of the general class to which the particular proceedings belong.’” *State v. Payne*, 223 Ariz. 555, ¶ 6 (App. 2009) (quoting *In re Marriage of Dorman*, 198 Ariz. 298, ¶ 7 (App. 2000)). Kay’s jurisdictional claim is based on a purportedly defective indictment. Even assuming she were correct that the indictment was flawed, a deficient charging instrument does not deprive a court of subject matter jurisdiction. *See State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010).

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¶5 In any event, Kay is not entitled to relief even if her claim implicated the trial court's jurisdiction and was raisable in a successive proceeding like this one. *See* Ariz. R. Crim. P. 32.1(b), 32.2(b), 32.4(b)(3)(B). Kay has not complied with Rule 32.2(b) by explaining why she did not raise this claim in a previous proceeding or in a timely manner. Thus, the court did not err in summarily dismissing her petition.

¶6 We grant review but deny relief.