

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHAYKH MUHAMMAD ALSAUD,
Petitioner.

No. 2 CA-CR 2022-0007-PR
Filed March 18, 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NOT FOR PUBLICATION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 Pima County
No. CR20130740001
The Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Shaykh Alsaud, Florence
In Propria Persona

STATE v. ALSAUD
Decision of the Court

MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Shaykh Alsaud seeks review of the trial court’s order summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 33, 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). Alsaud has not shown such abuse here.

¶2 Alsaud pleaded guilty to kidnapping and was sentenced to a ten-year prison term. Pursuant to a petition for post-conviction relief and a stipulation between Alsaud and the state, he was resentenced (again to a ten-year prison term) in May 2017 to account for 1,090 days of presentence incarceration credit not addressed by his original sentence. Alsaud filed another petition for post-conviction relief in December 2017, which the trial court summarily dismissed.

¶3 In November 2021, Alsaud filed his third petition for post-conviction relief, raising various claims, including that he was entitled to an additional “6 months jail credit” against his sentence and indicating he “continues to be or will continue to be in custody” after his sentence expires. The trial court summarily dismissed the petition and denied Alsaud’s subsequent motion for rehearing, noting that it would summarily dismiss “future, successive motions without legally sufficient new evidence and without a showing of extraordinary circumstances as to why they could not be properly submitted timely.” Alsaud then filed in the trial court a motion seeking to “appeal[]” the court’s denial of his rehearing motion, which the court denied. This petition for review followed.

¶4 Alsaud seeks review of the trial court’s order summarily dismissing his November 2021 petition for post-conviction relief. But his petition for review is untimely, having been filed more than thirty days after the court denied his motion for rehearing. *See Ariz. R. Crim. P. 33.16(a)(1)*. Even if we disregard the untimeliness of Alsaud’s petition for review on that basis, however, he is not entitled to relief. *See State v. Padilla*,

STATE v. ALSAUD
Decision of the Court

176 Ariz. 81, 83 (App. 1993) (“Failure to file a timely motion for rehearing or petition for review is not jurisdictional.”).

¶5 In his petition for review, Alsaud repeats his argument that he is entitled to 180 days of additional presentence incarceration credit. Whether characterized as a claim of an illegal sentence under Rule 33.1(c) or continued custody past his sentence’s expiration under Rule 33.1(d), Alsaud’s claim is not subject to preclusion on waiver grounds,¹ see Ariz. R. Crim. P. 33.2(b), and was timely if filed “within a reasonable time after discovering the basis for the claim,” Ariz. R. Crim. P. 33.4(b)(3)(B). Alsaud appears to have been aware of this claim at his 2017 resentencing; thus, notwithstanding the untimeliness of his instant petition for review, his underlying claim is untimely. And even were the underlying claim somehow timely, Rule 33.2(b)(1) requires a defendant raising such a claim to “explain the reasons for not raising the claim in a previous notice or petition” or the trial court may summarily dismiss the petition. Alsaud has not addressed this requirement in either his petition below or his petition for review. The trial court did not err in summarily dismissing Alsaud’s petition for post-conviction relief.

¶6 We grant review but deny relief.

¹Although Alsaud contributed to any error by stipulating to the number of days of presentence incarceration credit at his 2017 resentencing, the parties cannot agree to an illegal sentence. See *State v. Robertson*, 249 Ariz. 256, ¶¶ 22-28 (2020).