

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JEROLD YAZZIE,
Petitioner.

No. 2 CA-CR 2022-0065-PR
Filed September 26, 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NOT FOR PUBLICATION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. S1100CR201600755
The Honorable Christopher J. O'Neil, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Jerold Yazzie, Kingman
In Propria Persona

STATE v. YAZZIE
Decision of the Court

MEMORANDUM DECISION

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

E P P I C H, Presiding Judge:

¶1 Jerold Yazzie 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 ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Yazzie has shown no such abuse here.

¶2 In February 2017, Yazzie pleaded guilty to attempted molestation of a child and sexual abuse, both dangerous crimes against children. Consistent with the terms of the plea agreement, the trial court sentenced him to six years in prison with 1,166 days of presentence incarceration credit, to be followed by lifetime probation. Yazzie initiated his first post-conviction proceeding in June 2017. After counsel filed a notice of no colorable claim, Yazzie filed a pro se petition, which the court summarily dismissed in June 2018. In February 2020, the state filed a petition to revoke Yazzie’s probation, and he admitted the asserted violations. The court revoked Yazzie’s probation and sentenced him to a five-year term of imprisonment in June 2020.

¶3 In July 2020, Yazzie filed a pro se notice of and petition for post-conviction relief challenging his five-year sentence. The trial court granted Yazzie’s request that counsel be appointed to represent him, after which it struck his pro se petition and granted an extension for counsel to timely file a petition, or for Yazzie “to later file a petition on his own behalf as may be appropriate.” Counsel filed a notice stating she had found no colorable claims to raise, and the court granted Yazzie an extension of time in which to file a supplemental pro se petition. In May 2021, the court dismissed the proceeding because Yazzie failed to file a petition.

¶4 In April 2022, Yazzie initiated a third post-conviction proceeding, primarily asserting claims based on Rule 33.1(e) and (g). He argued A.R.S. § 13-902(A) was amended in 2021 and that amendment constituted a significant change in the law that would have impacted the length of his term of probation. He also asserted a claim purportedly based

STATE v. YAZZIE
Decision of the Court

on newly discovered evidence. He further asked that counsel be appointed to represent him. The trial court summarily dismissed his petition, and this petition for review and addendum followed in April and June 2022.

¶5 In its ruling below, the trial court denied Yazzie’s request that counsel be appointed to represent him. *See* Ariz. R. Crim. P. 33.5(a). The court also noted that there had been no relevant amendment to § 13-902 that applied to Yazzie, and that any changes to the statute since Yazzie committed his offenses would not have applied retroactively to him in any event. The court further concluded, “The relevant facts are that Yazzie was on probation, he admitted to a probation violation, and he received a sentence within the lawful range.” It also accurately noted that Yazzie did “not identify any newly-discovered evidence,” nor did he “offer any reason to believe that any newly-discovered material facts might have changed the judgment or sentence.” The court thus concluded that Yazzie failed to raise any claim that presented a material issue of fact or law entitling him to relief and dismissed the petition.

¶6 On review, Yazzie reasserts that purported changes to § 13-902 apply to him retroactively, and requests an evidentiary hearing.¹ However, Yazzie has not established that any changes were made to § 13-902 in 2021. Further, not only does he fail to explain how any purported changes to the statute are relevant to his case, as the trial court correctly noted below, but he also fails to adequately explain why an amended statute would apply to him retroactively. *See* A.R.S. § 1-244 (statute not retroactive unless expressly declared therein).

¶7 Yazzie also fails to meaningfully explain his argument, that “[t]he filing of a notice of no colorable claims . . . does not terminate the case.” Notably, rather than such notices having served to “terminate” his case, the trial court summarily dismissed Yazzie’s first Rule 33 proceeding only *after* he filed a pro se petition following counsel’s notice, and the court likewise dismissed his second proceeding only *after* he failed to timely file

¹In the addendum to his petition for review, Yazzie also argues that a certain document related to a confidential informant in his case was not in his handwriting and that an amended indictment constituted a violation of the prohibition against double jeopardy. Because Yazzie did not raise these claims in his petition below, we do not consider them. *See* Ariz. R. Crim. P. 33.16(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).

STATE v. YAZZIE
Decision of the Court

a pro se petition following counsel's notice. Moreover, as previously noted, Yazzie then initiated this, his third Rule 33 proceeding, which we conclude the court properly dismissed without a hearing.

¶8 Accordingly, we grant review but deny relief.