

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAMIAN CAMACHO IZGUERRA,
Petitioner.

No. 2 CA-CR 2022-0113-PR
Filed November 17, 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NOT FOR PUBLICATION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. S1100CR201700602
The Honorable Jason R. Holmberg, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Deputy County Attorney, Florence
Counsel for Respondent

Damian C. Izguerra, Florence
In Propria Persona

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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 Damian Izguerra seeks review of the trial court’s order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, 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). Izguerra has not met his burden of establishing such abuse here.

¶2 After a jury trial, Izguerra was convicted of two counts of sexual abuse of a minor under fifteen years of age, two counts of sexual abuse of a minor fifteen years of age or older, three counts of child molestation, and one count of sexual assault. He was sentenced to concurrent and consecutive prison terms totaling 59.5 years. We affirmed his convictions and sentences on appeal. *State v. Izguerra*, No. 2 CA-CR 2018-0228 (Ariz. App. Jun. 10, 2019) (mem. decision).

¶3 Izguerra sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found “no colorable claims” to raise in a post-conviction proceeding. In April 2021, the trial court dismissed the proceeding after Izguerra did not file a pro se petition within the time allowed. Izguerra did not seek review of that ruling.

¶4 In July 2022, Izguerra filed a notice of and petition for post-conviction relief citing Rule 32.1(a), (c), and (h) and asserting that five of his sentences were improperly enhanced as dangerous crimes against children. He argued he could not be sentenced for a dangerous crime against children absent a jury finding that his offenses were “dangerous” as defined by A.R.S. § 13-105(13) and there was no evidence to support such a finding. The trial court summarily dismissed the proceeding, and this petition for review followed.

¶5 On review, Izguerra repeats his claim that he cannot be sentenced for dangerous crimes against children under A.R.S. § 13-705 without a jury finding that his offenses were dangerous as defined by

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§ 13-105(13).¹ He relies chiefly on *State v. Sepahi*, 206 Ariz. 321 (2003) and *State v. Fernandez*, 216 Ariz. 545 (App. 2007), to support his claim.

¶6 Izguerra’s argument finds no support in the statutory text or the authority he cites. “Dangerous crimes against children” are defined by § 13-705(T)(1) as any of certain enumerated offenses “committed against a minor who is under fifteen years of age.” “Dangerous offense[s],” in contrast, are defined by § 13-105(13), and the sentencing for dangerous offenses is governed by A.R.S. § 13-704. Section 13-705 does not require that the identified offenses must qualify as dangerous offenses under § 13-105(13). *Sepahi* finds no such requirement and neither does *Fernandez*. Our supreme court in *Sepahi* concluded only that, for a crime listed in § 13-705 to be considered a dangerous crime against children, it must be “directed, aimed at, [or] targeted” against a victim under the age of fifteen. 206 Ariz. 321, ¶ 19. This court in *Fernandez* applied that requirement, nothing more. 216 Ariz. 545, ¶ 22.

¶7 Five of Izguerra’s sentences were enhanced under § 13-705—two counts of sexual abuse of a minor under the age of fifteen and three counts of child molestation. These offenses are enumerated in § 13-705(T)(1) and had as their victim a child under the age of fifteen. *See* A.R.S. §§ 13-705(T)(1)(d), (j), 13-1404(A), 13-1410(A). Thus, Izguerra’s sentences for those offenses were subject to enhancement under § 13-705.

¶8 We grant review but deny relief.

¹Although the trial court also addressed Izguerra’s sentencing claim on its merits, it characterized it as an untimely constitutional claim falling under Rule 32.1(a), concluding Rule 32.1(c) did not encompass his argument that the jury was required to find his offenses were dangerous. Rule 32.1(a) is limited to constitutional claims, while subsection (c) permits a defendant to claim the “sentence as imposed is not authorized by law.” Because Izguerra’s claim is without merit, we need not decide whether it is cognizable under Rule 32.1(c) and therefore not subject to the timeliness requirement governing claims under Rule 32.1(a). *See* Ariz. R. Crim. P. 32.4(b)(3)(A), (B). The court also treated Izguerra’s claim under Rule 32.1(h) as applying to his convictions, not just his sentence enhancement. We do not interpret his arguments as encompassing his underlying convictions—only his sentences.