

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

GARY SCOTT DOUGLAS,
Petitioner/Appellant,

v.

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

Nos. 2 CA-HC 2022-0004 and 2 CA-HC 2022-0005 (Consolidated)
Filed November 23, 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NOT FOR PUBLICATION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. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pima County
Nos. CR20002035002 and CR20011574001
The Honorable Javier Chon-Lopez, Judge

AFFIRMED

COUNSEL

Gary S. Douglas, Florence
In Propria Persona

Laura Conover, Pima County Attorney
By Maile Belongie, Deputy County Attorney, Tucson
Counsel for Respondent/Appellee

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Eckerstrom and Judge Cattani concurred.

V Á S Q U E Z, Chief Judge:

¶1 Gary Douglas appeals from the trial court’s order denying his petition for a writ of habeas corpus. We review the denial of such a petition for an abuse of discretion. *State v. Cowles*, 207 Ariz. 8, ¶ 3 (App. 2004). Because the court did not abuse its discretion, we affirm.

¶2 In May 2002, pursuant to a plea agreement, Douglas was convicted of first-degree burglary, first-degree murder, and three counts of aggravated assault in two causes. The trial court imposed concurrent, fifteen-year prison sentences on the aggravated assault and burglary convictions and a concurrent prison term of natural life for the murder conviction.

¶3 In April 2021, Douglas filed a petition for a writ of habeas corpus in the Pinal County Superior Court, arguing the Pima County Superior Court proceeding was “void for want of jurisdiction” and he was being illegally confined as a result. He relied on a decision by a superior court judge that “A.R.S. § 13-604 in its entirety was recognized as unconstitutional” and asserted he had been charged with a “violation of A.R.S. § 13-604.01.” As a result, he maintained his convictions were a “nullity.”

¶4 The Pinal County court determined that Douglas’s petition challenged the validity of his conviction and should therefore be treated as a petition pursuant to Rule 33.3, Ariz. R. Crim. P. It transferred the matter to Pima County where it was initially docketed as a civil matter before being transferred to the sentencing division in Douglas’s original criminal causes. After the court ordered the state to file a response addressing whether the proceeding should be one under Rule 33 or a request for a writ of habeas corpus, the state responded “[o]stensibly, Douglas’s claim could be brought under either rule,” but encouraged the court to treat the petition as an application for a writ of habeas corpus. The court agreed to do so, then denied the petition, determining that Douglas had waived his argument

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and that, in any event, it was without merit. The court also denied Douglas's subsequent "Motion to Set Aside Judgment" and motion for reconsideration.

¶5 On appeal, Douglas asks this court to "remand this case back to the superior court" because it improperly "disposed of" his petition in his original criminal causes. Douglas is correct that a proceeding for a writ of habeas corpus is generally a civil matter. *See In re Anderson*, 6 Ariz. App. 563, 564-65 (1967). As the state points out, however, the Arizona Constitution allows the "superior court or any judge thereof" to issue a writ of habeas corpus. Ariz. Const. art. VI, § 18. And Douglas has cited no authority to support his implicit contention that assignment of a criminal rather than a civil cause number to a proceeding deprives a trial court of authority to issue a writ or to deny a request for such a writ. *See Ariz. R. Civ. App. P. 13(a)(7)(B)*; *cf. Ariz. Const. art. VI, § 27* ("No cause shall be reversed for technical error in pleadings or proceedings when upon the whole case it shall appear that substantial justice has been done.").

¶6 Furthermore, Douglas's habeas corpus petition, in which he asserted his convictions and sentences were void because the court lacked jurisdiction due to a purported constitutional error relating to the charges in his indictment, essentially challenged his continued confinement resulting from the sentences imposed after he pled guilty. Rule 33.3(b) specifically provides that a court must treat an application as a petition for post-conviction relief if it "receives any type of application or request for relief – however titled – that challenges the validity of the defendant's plea or admission of a probation violation, or a sentence following entry of a plea or admission of a probation violation." Thus, the trial court could have addressed the claim in the context of a criminal proceeding under the rules for post-conviction relief.

¶7 Finally, regardless of whether Douglas's petition is viewed as a habeas corpus matter or a petition for post-conviction relief, his claim is meritless. Even assuming Douglas were correct that his indictment was flawed, a deficient charging instrument would not deprive a court of subject-matter jurisdiction. *See State v. Maldonado*, 223 Ariz. 309, ¶ 13 (2010). The court therefore did not abuse its discretion in concluding Douglas was not entitled to relief. *See Cowles*, 207 Ariz. 8, ¶ 3.

¶8 We affirm the trial court's denial of the petition for a writ of habeas corpus.