

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

GREGORY ALLEN STANHOPE,  
*Petitioner.*

No. 2 CA-CR 2022-0140-PR  
Filed January 5, 2023

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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NOT FOR PUBLICATION  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).*

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Petition for Review from the Superior Court in Pima County  
No. CR08635001  
The Honorable James E. Marner, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Gregory Allen Stanhope, Caldwell, Idaho  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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V Á S Q U E Z, Chief Judge:

¶1 Gregory Stanhope seeks review of the trial court’s ruling summarily dismissing his successive 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. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Stanhope has not met his burden of establishing such abuse here.

¶2 After a jury trial, Stanhope was convicted of first-degree burglary and two counts each of armed robbery, kidnapping, and aggravated assault. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling fifty-seven years. This court affirmed his convictions and sentences on appeal. *State v. Stanhope*, 139 Ariz. 88 (App. 1984). Stanhope has sought and been denied post-conviction relief on at least eight occasions. *State v. Stanhope*, No. 2 CA-CR 2022-0055-PR (Ariz. App. June 3, 2022) (mem. decision) (eighth proceeding); *State v. Stanhope*, No. 2 CA-CR 2013-0062-PR (Ariz. App. July 2, 2013) (mem. decision) (seventh proceeding).

¶3 In June 2022, Stanhope simultaneously filed a notice of and petition for post-conviction relief, asserting a claim under Rule 32.1(d). He argued that the Arizona Department of Corrections, Rehabilitation and Reentry (ADCRR) was “threatening to hold [him] 3 days after [his] 15 year sentence should expire.” He reasoned that a “calendar year” equals 365 days, pursuant to A.R.S. § 13-105(4), and his current fifteen-year sentence equals 5,475 days but the ADCRR had calculated it to be 5,478 days, based on the inclusion of three extra leap-year days. In response, the state asked the court to deny relief, asserting that “the definition of ‘calendar year’ as 365 days” in § 13-105(4) does not apply to Stanhope because he “was not sentenced to ‘calendar year’ or flat time sentences.”

¶4 In August 2022, the trial court dismissed Stanhope’s petition. The court explained that “[w]hile researching this matter,” it had “learned that [Stanhope] was placed on community supervision (released) on August 8, 2022.” It therefore concluded that the issue was moot. Stanhope

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filed a petition for rehearing, which the court also denied. This petition for review followed.

¶5 On review, Stanhope repeats his claim that the ADCRR “miscalculated” his fifteen-year prison sentence by three days, “forcing [him] to serve 366 days for every ‘leap year.’” He further contends that the trial court abused its discretion in dismissing his petition because this issue is not moot, despite his release from prison in August 2022. He reasons that he is “still considered under the [c]ustody and control of the ADCRR” for purposes of Rule 32.1(d) until his sentence expiration date.

¶6 Rule 32.1(d) provides for post-conviction relief if “the defendant continues to be or will continue to be in custody after his or her sentence expired.” This provision includes “claims such as miscalculation of sentence or computation of sentence credits that result in the defendant remaining in custody when he or she should be free.” Ariz. R. Crim. P. 32.1(d) cmt.

¶7 Stanhope is correct that the Arizona Department of Corrections (ADC) oversees a defendant’s term of community supervision. See A.R.S. §§ 13-603(I) (“The term of community supervision shall be served consecutively to the actual period of imprisonment if the person signs and agrees to abide by conditions of supervision established by the state department of corrections.”), 41-1604.07(G) (department shall establish conditions of community supervision). But Stanhope has pointed us to no authority—and we are aware of none—suggesting that this ADC involvement equates to being “in custody” for purposes of Rule 32.1(d). Indeed, in related contexts, Arizona courts have determined that “the legislature intended the words ‘in custody’ to mean actual incarceration in a prison or jail and more than simply a restraint on freedom as onerous as jail or prison would be.” *State v. Reynolds*, 170 Ariz. 233, 235 (1992); see also *State v. Uriarte*, 194 Ariz. 275, ¶ 28 (App. 1998) (community supervision not equivalent to imprisonment).

¶8 Stanhope concedes that he is currently released from prison but contends that the ADCRR “could revoke” his release at any time. But a return to prison is purely speculative and insufficient to establish a colorable claim for post-conviction relief. See *State v. Donald*, 198 Ariz. 406, ¶ 21 (App. 2000) (to obtain evidentiary hearing, Rule 32 claim “must consist of more than conclusory assertions”). Stanhope has therefore failed to establish that he “will continue to be in custody after his or her sentence expired.” Ariz. R. Crim. P. 32.1(d). As such, we cannot say the court abused

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its discretion in summarily dismissing the petition.<sup>1</sup> *See State v. Boteo-Flores*, 230 Ariz. 551, ¶ 7 (App. 2012) (appellate court must uphold trial court's ruling if legally correct for any reason).

¶9 Accordingly, we grant review but deny relief.

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<sup>1</sup>To the extent Stanhope attempts to raise new claims that he did not present to the trial court, we will not address them for the first time on review. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980).