

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TREMAINE NEAL,
Petitioner.

No. 2 CA-CR 2023-0106-PR
Filed July 12, 2023

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NOT FOR PUBLICATION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 Maricopa County
No. CR2013002031001DT
The Honorable Sam J. Myers, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Tremaine Neal, Phoenix
In Propria Persona

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Brearcliffe and Judge Kelly concurred.

ECKERSTROM, Judge:

¶1 Tremaine Neal seeks review of the trial court’s ruling dismissing his “Motion for Relief from Judgment,” which the court treated as a petition for post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P. We will not disturb that ruling absent an abuse of discretion. *See State v. Mendoza*, 249 Ariz. 180, ¶ 1 (App. 2020). Neal has not met his burden of establishing such abuse here.

¶2 Pursuant to a 2014 plea agreement, Neal was convicted of three counts of attempted child molestation. The trial court sentenced him to ten years’ imprisonment, followed by lifetime probation. In February 2016, Neal sought post-conviction relief, and the trial court dismissed his petition. This court denied relief on review. *State v. Neal*, No. 1 CA-CR 17-0384 PRPC (Ariz. App. May 22, 2018) (mem. decision).

¶3 In June 2021, Neal filed a motion seeking “correction” of his sentence, arguing that the plea agreement was void because it had expired prior to signing and that the trial court lacked jurisdiction to sentence him. The court treated his motion as a petition for post-conviction relief and summarily dismissed it in July 2021. This court dismissed his petition for review as untimely. *State v. Neal*, No. 1 CA-CR 21-0388 PRPC (Ariz. App. Sept. 23, 2021) (order).

¶4 In January 2022, Neal filed a motion for relief from judgment, again arguing that the plea agreement was void and that the trial court lacked subject matter jurisdiction “to proceed and enforce this expired and revoked agreement.” In October 2022, the court determined that, pursuant to Rule 33.3(b), Neal’s motion constituted a third petition for post-conviction relief. The court explained, as to Neal’s claim that the plea agreement was expired, that Neal had waived all non-jurisdictional defects by pleading guilty and that the claim was precluded because Neal had raised it in his prior proceeding. It further determined that the expiration date in the written plea offer “does not invalidate” the agreement because, as happened here, the state “can always reopen the offer, and [the

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d]efendant is free to accept it.” In addition, the court observed that it had “jurisdiction to adjudicate [Neal]’s felonies” because “[s]ubject matter jurisdiction refers to the Court’s power to hear a type of case” and article VI, § 14(4) of the Arizona Constitution vested it with original jurisdiction in this case. The court thus summarily dismissed Neal’s motion. This petition for review followed.

¶5 On review, Neal seems to challenge the trial court’s July 2021 dismissal of his second proceeding for post-conviction relief. However, his petition for review is untimely as to that ruling. *See* Ariz. R. Crim. P. 33.16(a)(1) (“No later than 30 days after the entry of the trial court’s final decision on a petition . . . an aggrieved party may petition the appropriate appellate court for review of the decision.”). Moreover, he previously sought review of that ruling, and this court dismissed the matter because that petition for review was also untimely. *Neal*, No. 1 CA-CR 21-0388 PRPC, at 1. Even assuming Neal’s petition for review is timely as to the October 2022 dismissal of his third proceeding,¹ he raised the same claims in his second proceeding, as the trial court noted. *See* Ariz. R. Crim. P. 33.2(a)(2), (b)(1) (defendant is generally precluded from relief based on any ground “finally adjudicated on the merits in any previous post-conviction proceeding”). In any event, the court did not abuse its discretion. *See Mendoza*, 249 Ariz. 180, ¶ 1.

¶6 Neal argues the trial court “erred by declining to address” his claim that the plea agreement was “expired, void and no longer valid.” But the court addressed his argument, explaining that although the plea agreement contained language that it would expire if not entered by August 16, 2013, the state had the ability to reopen the offer, which is what happened here. Indeed, the minute entry for a settlement conference shows that the state was “willing to extend the Plea Agreement offer” to November 20, 2014. Neal accepted the plea agreement within that window at the change of plea hearing on November 19, 2014. Accordingly, Neal’s argument that the court lacked jurisdiction because “[t]here [was] no plea agreement to enforce” also fails.²

¹Neal filed a timely “Notice of Appeal” from the trial court’s October 2022 ruling. However, this court ordered him to file a proper petition for review pursuant to Rule 33.16(c). Neal’s subsequently filed petition was five days late.

²Neal also contends that he “was never held to be in violation of” A.R.S. § 13-902(E), “which is the section that gives the court jurisdiction” to

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¶7 We grant review but deny relief.

impose lifetime probation. But that argument was not raised in his third proceeding below. In any event, § 13-902(E) allows a court to impose probation for certain offenses “up to and including life”; it does not bestow “jurisdiction” upon the court. *See State v. Maldonado*, 223 Ariz. 309, ¶ 14 (2010) (“subject matter jurisdiction” refers to court’s statutory or constitutional power to hear and determine particular type of case). In addition, Neal’s plea agreement provided that he “may be placed on probation for any term up to his natural lifetime,” citing § 13-902.