

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 19 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2009-0345-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
TERRY WAYNE MAHURIN,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CR200301409

Honorable Janna L. Vanderpool, Judge

REVIEW GRANTED; RELIEF DENIED

Terry Mahurin

Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Terry Mahurin challenges the trial court's summary denial of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb a trial court's ruling denying a petition for post-conviction relief absent an abuse of discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Finding none, we deny relief.

¶2 Pursuant to a 2004 plea agreement, Mahurin was convicted of attempted molestation of a child under the age of fifteen. The trial court sentenced him pursuant to former A.R.S. § 13-604.01(I)¹ to a presumptive, ten-year term of imprisonment. Mahurin filed a petition for post-conviction relief in 2008, challenging his sentence and contending his counsel had provided ineffective assistance by failing to make such a challenge below.² Based primarily on our holding in *State v. Gonzalez*, 216 Ariz. 11, 162 P.3d 650 (App. 2007), which Mahurin contended constituted a significant change in the law, he argued that § 13-604.01 did not apply to his crime. The trial court denied relief, stating:

As to Petitioner’s claim of an illegal sentence . . . Petitioner misunderstands the law, and has failed to state a claim upon which relief may be granted. The sentence in this case was within that contemplated by the legislature, and is not illegal. As to Petitioner’s claims of ineffective assistance of counsel, the Court finds no evidence to support such a claim. There has been no showing that defense counsel’s performance fell below an objective standard of reasonableness.

¶3 In *Gonzalez*, we held that, due to an apparent legislative oversight, § 13-604.01, by the plain language of its terms, did not apply to the crime of attempted sexual conduct with a victim under the age of twelve. 216 Ariz. 11, ¶¶ 8-10, 162 P.3d at 652-53.

¹Section 13-604.01 has been amended since Mahurin was sentenced and renumbered as A.R.S. § 13-705, effective January 1, 2009. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29. We refer to the version of the statute in effect at the time of Mahurin’s offense. *See* 2001 Ariz. Sess. Laws, ch. 334, § 7.

²Mahurin actually alleged in his petition that “appeals counsel” had been ineffective by failing to “address the validity of” and “other constitutional concerns and structural errors involving the statutes the court used in [Mahurin’s] sentencing.” Because Mahurin pled guilty and waived his right to an appeal, we assume his claim of ineffective assistance of counsel was aimed at trial counsel.

Mahurin apparently has interpreted *Gonzalez* as holding that § 13-604.01 did not apply to any attempted crime. As the trial court stated, however, he has misinterpreted the law. Our holding in *Gonzalez* applies only to the specific situation that had been presented in that case. Gonzalez's crime had implicated § 13-604.01(C), which was limited to offenses against children twelve to fourteen years of age. Mahurin's crime, on the other hand, fell under § 13-604.01(D), which did not contain the same age restriction. Thus, the court correctly concluded Mahurin had been appropriately sentenced. Mahurin's ineffective assistance claim apparently had been based primarily on the same misinterpretation of *Gonzalez*. Thus, we find no abuse of discretion in the court's denial of Mahurin's petition for post-conviction relief. To the extent Mahurin has attempted to raise additional claims for relief on review, we do not address them. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review may address only issues decided by trial court).

¶4 Although we grant Mahurin's petition for review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Judge