

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

JUL -9 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0114-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JAIME R. ESPINOZA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20043051

Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
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Isabel G. Garcia, Pima County Legal Defender
By Joy Athena

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ESPINOZA, Judge.

¶1 Petitioner Jaime Espinoza seeks review of the trial court's order summarily denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.

Espinoza pleaded guilty to failing to register as a sex offender and, in his petition for post-conviction relief, he sought reversal of that 2004 conviction on the ground that he was actually innocent of the charge. *See* Ariz. R. Civ. P. 32.1(h).¹ Although Espinoza did not dispute that the terms of probation imposed in an earlier case, Pima County Cause No. CR 2003-3528, required him to register as a sex offender, he argued the court in that case had lacked authority to impose the requirement.

¶2 The trial court denied relief, finding Espinoza could not “use the instant petition to challenge a condition of probation ordered in a separate cause number.” The court further found Espinoza could not establish a claim of actual innocence pursuant to Rule 32.1(h), in light of his acknowledgment, when he pleaded guilty in this case, “that he had an affirmative duty to register and had not done so.”

¶3 In his petition for review, Espinoza contends the trial court abused its discretion in refusing to consider the merits of his claim that he was “actually innocent” of failing to register because the registration requirement was imposed erroneously in Pima County No. CR 2003-3528. Relying on *State v. Vargas-Burgos*, 162 Ariz. 325, 783 P.2d 264 (App. 1989), Espinoza contends the registration requirement in Pima County No. CR 2003-3528 was “void *ab initio*” and, “[t]herefore, he never had to register as a sex offender, and he is actually innocent of the elements of the offense” for which he was convicted in this case.

¶4 But in *State v. Bryant*, 219 Ariz. 514, ¶¶ 13-15, 200 P.3d 1011, 1014-15 (App. 2008), we explained that, notwithstanding language found in *Vargas-Burgos*, when

¹Rule 32.1(h), Ariz. R. Crim. P. provides a ground for post-conviction relief when a “defendant demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt, or that the court would not have imposed the death penalty.”

a trial court “has jurisdiction over the subject matter and parties,” but issues an erroneous order that is subject to reversal on timely review, the order is “not void, but voidable.” “And a judgment ‘that is voidable is binding and enforceable and has all the ordinary attributes of a valid judgment until it is reversed or vacated.’” *Id.* ¶ 13, quoting *State v. Cramer*, 192 Ariz. 150, ¶ 16, 962 P.2d 224, 227 (App. 1998).

¶5 As the trial court observed, Espinoza presented no evidence that the judgment in Pima County Cause No. CR 2003-3528 had been modified “by proper and timely post-judgment motion” in that case. *Bryant*, 219 Ariz. 514, ¶ 15, 200 P.3d at 1015. The court correctly concluded Espinoza had failed to state a colorable, cognizable claim in his petition for post-conviction relief. *Cf. Cramer*, 192 Ariz. 150, ¶ 17, 962 P.2d at 227-28 (driver license revocation order arising from later-vacated conviction “merely voidable”; until vacated, order “was valid and binding and defendant was required to obey it”). We find no abuse of discretion in the court’s summary denial of relief. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of post-conviction relief reviewed for abuse of discretion).

¶6 Accordingly, although we grant the petition for review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

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