

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

DEC -3 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0275-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
TODD RUSSELL YARNES,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083144

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Todd Russell Yarnes

\_\_\_\_\_  
Douglas  
In Propria Persona

\_\_\_\_\_  
V Á S Q U E Z, Presiding Judge.

¶1 Todd Yarnes petitions this court for review of the trial court's order denying his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb this ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Yarnes was convicted pursuant to a plea agreement of aggravated identity theft, committed in July 1998.<sup>1</sup> See A.R.S. § 13-2009(A)(1). Pursuant to that plea agreement, he also admitted having one prior felony conviction. At sentencing, the trial court found as aggravating factors Yarnes’s two previous misdemeanor convictions; his prior felony conviction; his history of substance abuse; and the financial loss, emotional harm, and inconvenience he had caused the victims of his crime. Also in aggravation, the court found that Yarnes’s probation had been revoked in another case, that the court had issued a bench warrant because Yarnes had failed to appear earlier in the proceedings, and that the offense was committed while on release. The court found no mitigating factors. The court sentenced Yarnes to an aggravated, nine-year prison term.

¶3 Yarnes filed a notice of post-conviction relief and appointed counsel subsequently filed a notice stating she had reviewed the case and had not found “a meritorious issue of law or fact which may be raised as a basis for relief.” See Ariz. R. Crim. P. 32.4(c). Yarnes filed a pro se petition for post-conviction relief arguing the trial court had erred by finding that his prior conviction was an aggravating factor and relying on that same conviction to enhance his sentence, relying on *Cunningham v. California*, 549 U.S. 270 (2007). Yarnes also asserted that he was entitled to have a jury find aggravating factors beyond a reasonable doubt and that the court erred in failing to find any mitigating factors. The trial court summarily dismissed Yarnes’s petition,

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<sup>1</sup>Yarnes also pled guilty in two other, unrelated cases to theft by misrepresentation and aggravated identity theft. The presumptive, 3.5-year prison terms imposed in those two cases are concurrent with his sentence here.

concluding that *Cunningham* did not preclude the use of Yarnes's prior conviction to both enhance and aggravate his sentence, that it had properly aggravated Yarnes's sentence, that Yarnes had waived as part of his plea agreement the right to have a jury determine aggravating factors beyond a reasonable doubt, and that it had considered the evidence presented in mitigation and "declin[ed] to accept [it] as mitigating."

¶4 On review, Yarnes contends the trial court erred in finding that *Cunningham* and *United States v. Staten*, 450 F.3d 384, amended by 466 F.3d 708 (9th Cir. 2006),<sup>2</sup> did not entitle him to relief, asserting these "federal ruling[s] control . . . when no state authority can be applied." He also summarily asserts the court erred by "failing to note any mitigating factors." Yarnes's arguments are meritless, and the trial court correctly rejected his claims in a thorough and well-reasoned minute entry. Because we see no purpose in repeating or embellishing the court's ruling here, we instead adopt it.<sup>3</sup> *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly identifies and rules on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would

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<sup>2</sup>The Ninth Circuit Court of Appeals determined in *Staten* that sentencing factors must be found by clear and convincing evidence if their application would result in a "disproportionate sentence." 450 F.3d at 394. Although Yarnes did not cite *Staten* in his petition for post-conviction relief, the trial court determined, relevant to Yarnes's claim he was entitled to have his aggravating factors found by a jury beyond a reasonable doubt, that *Staten* did not entitle Yarnes to relief.

<sup>3</sup>The court cited in its ruling the current versions of the sentencing statutes, not the versions in effect at the time Yarnes committed the instant offense. The Arizona criminal sentencing code has recently been amended and renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective "from and after December 31, 2008." *Id.* § 120. Because these changes to our sentencing statutes included no substantive changes material here, *see id.* § 119, we adopt the court's ruling.

be served by this court rehashing the trial court’s correct ruling in a written decision”). And, because Yarnes did not raise them in his petition for post-conviction relief, we do not address his claim that § 13-701(E)(6) is unconstitutional or, relying on *State v. Perrin*, 222 Ariz. 375, 214 P.3d 1016 (App. 2009), that the court erred in aggravating his sentence based on the “catch-all” provision in § 13-701(D)(24). *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Rule 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court . . . which the defendant wishes to present” for review).

¶5 For the reasons stated, although we grant review, we deny relief.

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

CONCURRING:

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

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge