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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ANTHONY JOSEPH STRINGER, Petitioner.	2 CA-CR 2009-0303-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20043907

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Law Office of Ronald Zack
By Ronald Zack
Tucson
Attorney for Petitioner

B R A M M E R, Judge.

¶1 In this petition for review, Anthony Stringer challenges the trial court's summary dismissal of a petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling unless it clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2006).

¶2 After a jury trial, Stringer was convicted of seven felonies: fleeing from a law enforcement vehicle, criminal damage, three counts of aggravated assault, and two counts of endangerment. He committed the offenses during and just after a high-speed, fifty-minute, police pursuit of the vehicle he was driving. The jury found all but two of the counts were dangerous-nature offenses and also found Stringer had three historical prior felony convictions. At sentencing, Stringer admitted he had been on parole when he committed the present offenses, and the trial court sentenced him to prison for a total of 35.75 years. This court affirmed his convictions and sentences on appeal. *State v. Stringer*, No. 2 CA-CR 2007-0034 (memorandum decision filed Sept. 18, 2008).

¶3 Stringer then filed a notice of and petition for post-conviction relief. As grounds for relief, he asserted that newly discovered evidence entitled him to a new trial pursuant to Rule 32.1(e) and that his sentence had been enhanced illegally pursuant to former A.R.S. § 13-604.02.[1] In a written minute entry, the trial court ruled that Stringer had not alleged a colorable claim of newly discovered evidence for purposes of Rule 32.1(e) and that his sentences had been enhanced properly based on his having been on parole from a previous conviction when he committed the present offenses. The court thus denied relief, and this petition for review followed.

[1]Section 13-604.02 has subsequently been renumbered as A.R.S. § 13-708 and amended. *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 17(B), 32. We refer in this decision to the statute as it was numbered and phrased when Stringer committed these offenses and was sentenced. *See* 1999 Ariz. Sess. Laws, ch. 261, § 7 (former § 13-604.02).

¶4 In substance, Stringer's petition for review is little different than his petition for post-conviction relief. As both petitions state, involuntary intoxication was Stringer's theory of defense to all charges at trial. He testified he had felt as if he were "on LSD"[2] when he committed these offenses in October 2004 and believed a person named Jamar Atkins had put LSD in Stringer's drink while they both were at a party.

¶5 Atkins testified at Stringer's trial and denied having contaminated Stringer's drink or even having known Stringer before they met in jail in 2005. Stringer also called as a witness James Hoisington, who had been in jail with Atkins and Stringer and at one point had claimed to have some knowledge of a dispute between Atkins and Stringer that might have given Atkins a motive to retaliate against Stringer by lacing his drink with LSD.

¶6 What Stringer alleged to be newly discovered evidence for purposes of Rule 32.1(e) was the proposed testimony of a person named Corey Washington-Taylor, whom Stringer had met in prison in 2007. Stringer claimed Washington-Taylor "had been a roommate of Jamar Atkins in Tucson at the time of the incident" and would corroborate Stringer's claim that Atkins had been angry at Stringer and had put LSD in his drink for that reason. In other words, Washington-Taylor's testimony, if admitted and believed, would have served to impeach Atkins's testimony and bolster Stringer's and Hoisington's.

[2]Lysergic acid diethylamide.

¶7 The trial court found the proposed testimony of Washington-Taylor failed to satisfy the requirements of Rule 32.1(e)(3) for newly discovered evidence, both because its purpose was only to bolster, impeach, or contradict other testimony presented at trial and because it was unlikely to have changed the verdicts, given what the court deemed "the overwhelming evidence of [Stringer]'s guilt." *See* Ariz. R. Crim. P. 32.1(e)(3); *State v. Jeffers*, 135 Ariz. 404, 426, 661 P.2d 1105, 1127 (1983); *State v. Morrow*, 111 Ariz. 268, 270, 528 P.2d 612, 614 (1974); *State v. Mann*, 117 Ariz. 517, 520, 573 P.2d 917, 920 (App. 1977). We agree with the court's analysis of Stringer's newly-discovered-evidence claim and have nothing further to add to its written ruling, which adequately articulates, analyzes, and resolves the issue. *See generally 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 be served by this court['s] rehashing the trial court's correct ruling in a written decision").

¶8 In the other issue raised, Stringer contends, as he did below, that his sentences should not have been enhanced pursuant to § 13-604.02 because "the trial court never officially made a finding" that he had been on parole when he committed the present offenses. Therefore, he claims, he should not be required to serve his sentences day-for-day, with no possibility of early release. Although the issue arguably was precluded because Stringer could have raised it on appeal, *see* Ariz. R. Crim. P. 32.2(a)(3), the trial court addressed the merits of Stringer's claim. Consequently, in the

exercise of our discretion, we elect to do the same. But we find no merit to his argument, which is unsupported by the record.

¶9 Section 13-604.02(B) was alleged properly in each count of the indictment against Stringer, and he personally admitted the allegation under oath. In testifying at the mitigation hearing that preceded his sentencing, Stringer admitted having been on parole for approximately forty days when he committed these offenses. Following his admission, the trial court confirmed with the prosecutor and defense counsel that both agreed the fact of Stringer's having been on parole had been established, and the prosecutor told Stringer's parole officer, who was present and waiting to testify, that his testimony would not be needed.

¶10 After the state then presented the testimony of one witness in aggravation, the trial court pronounced sentence. It recited the seven charges of which Stringer had been found guilty then stated: "All offenses herein are repetitive with two historical prior felony convictions. . . . All offenses in this indictment occurred October 9th, 2004, and each was committed while Mr. Stringer was on parole pursuant to A.R.S. [§] 13-604.02." Stringer's post-conviction contention therefore rests entirely on a mistaken factual premise.

¶11 The sentencing minute entry fails to cite § 13-604.02, an omission that apparently prompted the Arizona Department of Corrections to ask the trial court for clarification in 2007. But the omission was essentially a clerical or scrivener's error in the minute entry, not a substantive legal error; Stringer's sentences were complete when,

and as, pronounced. Ariz. R. Crim. P. 26.16(a); *State v. Hanson*, 138 Ariz. 296, 304, 674 P.2d 850, 858 (App. 1983). When there is a discrepancy between a trial court's statements and the sentencing minute entry, "the oral pronouncement of sentence controls." *Id.* at 304-05, 674 P.2d at 858-59; *see also State v. Johnson*, 108 Ariz. 116, 118, 493 P.2d 498, 500 (1972).[3]

¶12 The trial court did not abuse its discretion in summarily dismissing Stringer's petition for post-conviction relief. Although we grant his petition for review, we deny relief.

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

CONCURRING:

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

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

[3]The imposition of a flat-time sentence was mandatory under § 13-604.02(B), and the trial court had no discretion in the matter.