

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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CARL B. BRANSON,)	
)	
Petitioner/Appellant,)	2 CA-HC 2009-0001
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
STATE OF ARIZONA,)	Rule 28, Rules of Civil
)	Appellate Procedure
Respondent/Appellee.)	
_____)	

APPEAL FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. CV200901703

Honorable Boyd T. Johnson, Judge

AFFIRMED

Carl B. Branson

Florence
In Propria Persona

Terry Goddard, Arizona Attorney General
By Michael L. Brodsky

Phoenix
Attorneys for Respondent/Appellee

V Á S Q U E Z, Judge.

¶1 Carl B. Branson was convicted in 1997 of two counts of sexual conduct with a minor. In this appeal, he challenges the trial court's order dismissing his petition for a writ of habeas corpus. In its minute entry order, the trial court briefly reviewed the history of this case, noting that Branson had filed pleadings entitled petition for writ of habeas corpus on two prior occasions and that relief had been denied appropriately in those proceedings as well. The court found the claims Branson raised in this petition were not the type that may be raised in a petition for writ of habeas corpus but should have been raised on appeal or were cognizable under Rule 32, Ariz. R. Crim. P. It therefore dismissed the petition and ordered the case transferred to the superior court of Maricopa County for further proceedings pursuant to Rule 32.3.¹

¶2 In 2004, Branson filed a petition for review similar to this one. There, he had filed a petition for writ of habeas corpus in which he had raised a number of claims, many of which were related to his contention that the trial court had permitted the state to play an audiotaped recording of a telephone call between Branson and his daughter, the victim of these offenses. Branson also challenged the constitutionality of the statutes under which he

¹Rule 32.3 provides:

If a defendant applies for a writ of habeas corpus in a trial court having jurisdiction of his or her person raising any claim attacking the validity of his or her conviction or sentence, that court shall under this rule transfer the cause to the court where the defendant was convicted or sentenced and the latter court shall treat it as a petition for relief under this rule.

was convicted and claimed that both trial and appellate counsel had been ineffective. The court found the claims were not properly raised in a petition for writ of habeas corpus but that they could have been raised on appeal or in a petition for post-conviction relief pursuant to Rule 32. We agreed with the trial court on appeal. *Branson v. Gay*, No. 2 CA-HC 2004-0001 (memorandum decision filed Dec. 16, 2004). As we stated in that decision,

[t]he only appropriate claim a person may raise in a petition for habeas corpus is that he or she is being imprisoned without legal cause, for example, because the court that imprisoned the person lacked jurisdiction of the person or crime or because the person has completed a prison sentence but has not been released.

¶3 In this petition, Branson raised similar claims that could also have been raised on appeal from his convictions or were cognizable under Rule 32. Specifically, he challenged the validity of his conviction, the constitutionality of certain statutes, and the effectiveness of counsel. But “[t]he writ of habeas corpus is not the appropriate remedy to review irregularities or mistakes in a lower court unless they pertain to jurisdiction.” *State v. Court of Appeals*, 101 Ariz. 166, 168, 416 P.2d 599, 601 (1966); *see also Garcia v. Eyman*, 4 Ariz. App. 37, 38, 417 P.2d 550, 551 (1966) (matters that might reasonably have been raised on appeal cannot be relitigated by means of habeas corpus). And we are not persuaded that the remedies available to Branson under Rule 32 are inadequate, notwithstanding the fact he is precluded from raising claims he could have raised on appeal or in an initial petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.2(a). Branson has had ample opportunity to raise such claims and cannot do so by asserting them in a petition

for writ of habeas corpus. When appropriate, “[a] habeas corpus petition may be transferred to the conviction or sentencing court and treated as a Rule 32 petition.” *Floyd v. Superior Court*, 134 Ariz. 472, 474, 657 P.2d 885, 887 (App. 1982); *see also* Ariz. R. Crim. P. 32.3. Thus, the trial court did not err by dismissing the petition and forwarding it to the court in which Branson was prosecuted, tried, convicted, and sentenced.

¶4 Affirmed.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

ANN A. SCOTT TIMMER, Judge*

*The Honorable Ann A. Scott Timmer, Chief Judge of Division One of the Arizona Court of Appeals, is authorized to participate in this appeal pursuant to A.R.S. § 12-120(F) (2003).