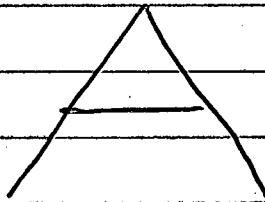


EXHIBIT





Supreme Court
STATE OF ARIZONA

SCOTT BALES
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007-3231
TELEPHONE: (602) 452-3396

JANET JOHNSON
Clerk of the Court

May 10, 2019

RE: STATE OF ARIZONA v JUSTIN JAMES THRASHER
Arizona Supreme Court No. CR-18-0619-PR
Court of Appeals, Division One No. 1 CA-CR 18-0595 PRPC
Maricopa County Superior Court No. CR2008-173377-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 10, 2019, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Chief Justice Bales, Justice Bolick, Justice Gould and Justice Lopez participated in the determination of this matter.

Janet Johnson, Clerk

TO:

Joseph T Maziarz
Diane Meloche
Justin James Thrasher, ADOC 256945, Arizona State Prison,
Florence - East/Shock Unit
Amy M Wood
pm

EXHIBIT

B

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

JUSTIN JAMES THRASHER, *Petitioner*.

No. 1 CA-CR 18-0595 PRPC
FILED 12-18-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2008-173377-001
The Honorable Joseph C. Welty, Judge

REVIEW GRANTED; RELIEF DENIED

APPEARANCES

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Justin James Thrasher, Florence
Petitioner

STATE v. THRASHER
Decision of the Court

MEMORANDUM DECISION

Presiding Judge James P. Beene, Judge Michael J. Brown and Judge James B. Morse Jr. delivered the following decision.

PER CURIAM:

¶1 Petitioner Justin James Thrasher seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1. This is petitioner's third petition.

¶2 Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19, 278 P.3d 1276, 1280 (2012). It is petitioner's burden to show that the superior court abused its discretion by denying the petition for post-conviction relief. *See State v. Poblete*, 227 Ariz. 537, ¶ 1, 260 P.3d 1102, 1103 (App. 2011) (petitioner has burden of establishing abuse of discretion on review).

¶3 We have reviewed the record in this matter, the superior court's order denying the petition for post-conviction relief, and the petition for review. We find that petitioner has not established an abuse of discretion.

¶4 We grant review and deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA

EXHIBIT

C

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2008-173377-001 DT

07/25/2018

HONORABLE JOSEPH C. WELTY

CLERK OF THE COURT
M. Mogel
Deputy

STATE OF ARIZONA

DIANE M MELOCHE

v.

JUSTIN JAMES THRASHER (001)

JUSTIN JAMES THRASHER
256945 ASPC FLORENCE EAST
PO BOX 5000
FLORENCE AZ 85132

COURT ADMIN-CRIMINAL-PCR
JUDGE WELTY

RULE 32 PROCEEDING DISMISSED

Pending before the Court are Defendant's "Notice and Petition for Post-Conviction Relief" filed on March 20, 2018 and "Notice of Filing Exhibits in Support of Petition for Post-Conviction Relief" filed on March 28, 2018. This is Defendant's third Rule 32 proceeding. It is untimely.

A. Background

A jury found Defendant guilty of second-degree murder, a class 1 dangerous felony; leaving the scene of a fatal injury accident, a class 2 felony; and endangerment, a class 6 dangerous felony. On September 17, 2010, the Court entered judgment and sentenced Defendant to concurrent 14- and 2-year terms of imprisonment and a consecutive 4-year term of imprisonment. The Arizona Court of Appeals affirmed the convictions and sentences, issuing its order and mandate on November 30, 2012. *State v. Thrasher*, 1 CA-CR 10-0765 (App. April 26, 2012) (mem. filed).

SUPERIOR COURT OF ARIZONA
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In his first Rule 32 proceeding, Defendant argued that he did not learn about a favorable plea offer of 12-16 years until after his direct appeal had concluded. Following briefing and a hearing, Defendant entered into a plea agreement in which he agreed to plead no contest to the three foregoing charges. On April 29, 2015, the Court resentenced Defendant to concurrent 14- and 2-year terms with 1,739 days of presentence incarceration credit, to be followed by a 7-year term of probation. Defendant then initiated a new Rule 32 proceeding, the Court appointed counsel, and counsel filed a Notice of Completion. This Court subsequently dismissed that proceeding in an order filed on November 30, 2016 when Defendant failed to meet the Petition filing deadline. He did not appeal.

B. Defendant's Untreated Ankle Claims

In his current submission, Defendant contends that his Eighth Amendment rights have been violated and he is entitled to relief under Ariz. R. Crim. P. 32.1(a). Defendant claims that he suffered a broken ankle and the Arizona Department of Corrections has not provided adequate medical care. (Notice at 8) Relying upon *Brown v. Plata*, 563 U.S. 493 (2011), he states that the State is inflicting cruel and unusual punishment and his release is warranted. (Notice at 1, 6, 11) He also relies upon *Parsons v. Ryan*, 289 F.R.D. 513 (D. Ariz. 2013), *aff'd* 754 F.3d 657 (9th Cir. 2014). (Notice at 3) His reliance upon these authorities is misplaced.

In *Plata*, the defendants brought a class action under the Prison Litigation Reform Act, 18 U.S.C. § 3626, against the California governor in federal district court, alleging that they had received inadequate medical and mental health care in violation of their Eighth Amendment rights. The United States Supreme Court accordingly required the State of California to reduce prison overcrowding to improve mental health services for inmates. *Plata*, 563 U.S. at 541-45. Likewise, *Parsons* is an ongoing case in which an Arizona District Court has certified a class action against prison officials based upon alleged systemic deficiencies in medical care and confinement conditions. Neither *Parsons* nor *Plata* supports Defendant's individual claim for immediate release. See *Pride v. Correa*, 719 F.3d 1130, 1136-37 (9th Cir. 2013) (holding the state may invoke *Plata* to preclude duplicative actions for systemic relief, but inmates seeking injunctive relief regarding individual medical care must proceed against prison officials under 42 U.S.C. § 1983). A Notice of Post-Conviction Relief is a tool for attacking the validity of a conviction or sentence; it is not a vehicle for asserting claims of inadequate medical care against the ADOC.

He further asserts that he holds dual American and Polish citizenship and unsuccessfully sought a transfer to a Polish prison for treatment pursuant to a U.S. -“Council of Europe Treaty.” (Notice at 5) Based upon Notice Ex. G, the ADOC advised Defendant that its Offender Information Unit Supervisor must deliver “the application packet to the County Superior Court

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for certification by the Presiding Judge and the Clerk of Court." Department Order 1004.1.9.1.2. According to Defendant, there is no evidence that the ADOC has complied with this requirement. A Notice of Post-Conviction Relief is a tool for attacking the validity of a conviction or sentence; it is not a vehicle for redress when the ADOC is violating its own policies regarding post-sentencing personal injuries. In this Rule 32 action, the Director of the ADOC is not a party and the Court lacks authority to issue such orders. If Defendant has such claims to raise, he will need to bring a separate special action under a civil cause number for an order compelling the Director of the ADOC to comply with its Department Order 1004.1.9.1.2 procedure. If Defendant desires injunctive relief regarding his individual medical care, his remedy is a civil action against prison officials under 42 U.S.C. § 1983, not a Rule 32 proceeding.

Defendant "must comply strictly with rule 32 by asserting substantive grounds which bring him within the provisions of the rule in order to be entitled to any relief." *State v. Manning*, 143 Ariz. 139, 141, 692 P.2d 318, 320 (App. 1984). When a notice is untimely, Defendant has the burden of alleging substantial claims and adequately explaining why the claims are untimely. Ariz. R. Crim. P. 32.2(b). Defendant has failed to meet this standard.

IT IS THEREFORE ORDERED dismissing Defendant's "Notice and Petition for Post-Conviction Relief" with exhibits pursuant to Rule 32.2(b) of the Arizona Rules of Criminal Procedure. This dismissal is without prejudice to Defendant obtaining relief in an appropriate type of action.

**Additional material
from this filing is
available in the
Clerk's Office.**