

APPENDIX A

MEMORANDUM DECISION

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Jurisdiction: Arizona Court of Appeals, Division One

Case Number: 1 CA-CR 16-0474 PRPC

APPENDIX A

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

GORDON M. MAYHEW, *Petitioner*.

No. 1 CA-CR 16-0474 PRPC
FILED 9-19-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2014-002075-001
The Honorable Karen A. Mullins, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Gordon M. Mayhew, Mesa
Petitioner

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which
Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

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THOMPSON, Judge:

¶1 Petitioner Gordon M. Mayhew petitions this court for review from the dismissal of his petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 Mayhew pled guilty to two counts of attempted sexual exploitation of a minor, class 3 felonies and dangerous crimes against children with stipulations to lifetime probation on both counts. He was sentenced to lifetime probation on both counts and a year in the county jail. Mayhew filed an "of right" notice and petition for post-conviction relief (PCR), was assigned counsel, who filed a Notice of Completion and Extension, and Mayhew filed a Defects in Matter Affidavit, construed by the superior court as a PCR, which the court summarily denied. His PCR essentially claimed a violation of the Fourth Amendment (illegal search and seizure); that his plea was involuntary (as a result of threats, duress, coercion and/or promises); and ineffective assistance of counsel relating to the failure of plea counsel to obtain a risk assessment, the plea process, his speedy trial rights, and release of property.

¶3 Mayhew filed a petition for review claiming entitlement to relief due to the state's failure to respond to his Defects in Matter Affidavit, again complaining of a Fourth Amendment violation, asserting actual innocence ("absolutely not guilty"), claiming an "illegal sentence" under Arizona Rule of Criminal Procedure 32.1 (c), and generally claiming "newly discovered material facts."

¶4 The failure to file a response or to speak in opposition to a petition does not entitle the petitioner to relief. *State v. Carwley*, 133 Ariz. 27, 29, 648 P.2d 142, 144 (App. 1982). Therefore, Mayhew's claim of default and automatic entitlement to relief is without merit. The court views allegations in a petition in light of the entire record to determine if a claim is colorable. *State v. Lemieux*, 137 Ariz. 143, 146, 699 P.2d 121, 124 (App. 1983).

¶5 The only issue Mayhew reiterates from his petition for post-conviction relief is his vague constitutional claim of an illegal search and seizure, which is without merit. Mayhew signed and entered a plea and waived all non-jurisdictional defenses and defects. *State v. Moreno*, 134 Ariz. 199, 200, 655 P.2d 23, 24 (App. 1982). This would include waiving any issues related to search and seizure. Under any circumstances, other than conclusory assertions, he does not support his claim with any references to

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the record or documentation as required. *See* Ariz. R. Crim. P. 32.9 (c) (1) (iii).

¶6 His claims of illegal sentence, newly discovered material facts, and actual innocence raised under Rules 32.1 (c), (e) and (h) respectively, were not raised below and therefore are not appropriate for consideration. Issues not presented to the trial court may not be presented in the petition for review. Rule 32.9 (c) (1); *State v. Wagstaff*, 161 Ariz. 66, 71, 775 P.2d 1130, 1135 (App. 1988), *approved as modified*, 164 Ariz. 485, 794 P.2d 118 (1990); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).¹ Under any circumstances, he has provided nothing tangible to support them other than conclusory allegations.

¶7 Mayhew did not raise other issues raised below, and they are deemed waived. *See* Rule 32.9 (c) (1) ("Failure to raise any issue that could be raised in the petition for cross-petition for review shall constitute waiver of appellate review of that issue.").

¶8 Finding no abuse of discretion, we grant review and deny relief.²



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

¹ We also note the multiple attempts of Mayhew to supplement the record and his original petition for review. As these include matters not presented to the superior court, or filed with the approval of this court, we do not consider them.

² While this court states some grounds different from the superior court for dismissing the petition, we may affirm a result on any basis supported by the record. *State v. Robinson*, 153 Ariz. 191, 199, 735 P.2d 801, 809 (1987).



SCOTT BALES
CHIEF JUSTICE

JANET JOHNSON
CLERK OF THE COURT

Supreme Court

STATE OF ARIZONA
ARIZONA STATE COURTS BUILDING
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January 23, 2018

RE: STATE OF ARIZONA v GORDON M MAYHEW

Arizona Supreme Court No. CR-17-0458-PR

Court of Appeals, Division One No. 1 CA-CR 16-0474 PRPC

Maricopa County Superior Court No. CR2014-002075-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on January 23, 2018, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

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

Janet Johnson, Clerk

TO:

Joseph T Maziarz

Diane Meloche

Gordon M Mayhew, Maricopa County Jail, Lower Buckeye

Amy M Wood

bp

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