

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

HARRY LEON WASHINGTON, *Petitioner*.

No. 1 CA-CR 14-0270 PRPC  
FILED 8-4-2016

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Petition for Review from the Superior Court in Maricopa County  
No. CR 1990-002815  
CR 1991-000926  
The Honorable Robert L. Gottsfield, Judge *Retired*

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Harry Leon Washington, Buckeye  
*Petitioner Pro Se*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Maurice Portley joined.

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**CATTANI**, Judge:

¶1 Harry Leon Washington seeks review of the superior court's summary dismissal of his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 In CR 90-02815, a jury found Washington guilty of burglary in the second degree and theft; the superior court suspended sentence and imposed concurrent terms of probation. While he remained on probation for both offenses, Washington committed another offense for which he was found guilty of second-degree murder in CR 91-00926. Based on the murder conviction, the superior court revoked probation for the burglary and theft convictions and imposed concurrent terms of imprisonment, the longest of which is five years. As to the murder conviction, the court sentenced Washington to life imprisonment without the possibility of release for 25 years, to be served consecutively to the burglary and theft sentences. Washington appealed, and this court affirmed the murder conviction, probation revocation, and sentences imposed. *State v. Washington*, 1 CA-CR 91-1213, 1 CA-CR 91-1214 (Ariz. App. Mar. 16, 1993) (mem. decision).

¶3 Washington filed multiple requests for post-conviction relief over the next 20 years, all of which were unsuccessful. On July 30, 2012, Washington filed a new petition for post-conviction relief alleging he was being illegally restrained, specifically arguing that he was not timely assigned counsel during the probation revocation proceedings, that the sentences imposed failed to include adequate credit for presentence incarceration, and that the life sentence imposed for the murder conviction was not authorized by law. The superior court found Washington's claims to be untimely and successive and thus precluded under Arizona Rule of Criminal Procedure 32.4(a), as well as precluded under Rule 32.2(a)(1) because they could have been raised on direct appeal. To the extent Washington's petition alleged a claim properly asserted in an untimely petition – that he was being illegally detained after his sentence expired, *see* Ariz. R. Crim. P. 32.1(d), 32.4(a) – the court noted that the claim was based

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solely on Washington's contention that the sentence imposed was excessive (not that the sentence imposed had expired), and thus was not cognizable as a matter of law. This petition for review followed.

¶4 We review the summary dismissal of a petition for post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). Washington's petition for review again asserts that he was not timely afforded counsel during the probation revocation proceedings, that his sentence for burglary and theft was excessive because it was not offset by the time he had spent on probation, and that the life sentence for his murder conviction was not authorized under A.R.S. § 13-604.02(A) (1991). These claims arise under Rule 32.1(a) (constitutional violations) and (c) (illegal sentence) and may not be raised in an untimely petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.4(a). Accordingly, the superior court did not err by summarily dismissing Washington's petition.

¶5 Washington's petition for review includes additional facts and arguments not raised before the superior court. A petitioner may not include new facts or argument in the petition for review not first presented to the superior court in the petition for post-conviction relief. *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980).

¶6 Accordingly, we grant review but deny relief.



Ruth A. Willingham · Clerk of the Court

FILED : AA