

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

GERALD FERGUSON, *Petitioner*.

No. 1 CA-CR 14-0517 PRPC  
FILED 8-4-2016

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Petition for Review from the Superior Court in Maricopa County  
No. CR2004-007249-001  
The Honorable A. Craig Blakey, II, Retired Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Gerald Ferguson, Florence  
*Petitioner*

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**MEMORANDUM DECISION**

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Patricia K. Norris and Judge Patricia A. Orozco joined.

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**S W A N N, Judge:**

¶1 Gerald Ferguson seeks review of the superior court's order summarily dismissing his motion to modify probation, which the court treated as a petition for post-conviction relief filed pursuant to Ariz. R. Crim. P. 32. We will not disturb a superior court's order denying relief under Rule 32 unless the court clearly abused its discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17, (2006). Ferguson has not met his burden of showing such abuse here.

¶2 In 2006, Ferguson pled guilty to one count of child molestation and two counts of attempted child molestation. On May 18, 2006, the superior court sentenced him to a seventeen-year prison term on the conviction for child molestation, and suspended the imposition of sentence and imposed lifetime probation on the two convictions for attempted child molestation. Ferguson timely sought post-conviction relief, and appointed counsel filed a notice stating he had found "no colorable claims" to raise pursuant to Rule 32. The superior court dismissed the proceeding in April 2007 after Ferguson failed to file a pro se petition within the allotted time.

¶3 In January 2014, Ferguson filed a motion to modify probation, arguing his terms of lifetime probation were unconstitutional and that the longest term of probation the trial court could impose on the class 3 felonies was five years. The trial court properly treated the motion as a petition for post-conviction relief, *see* Ariz. R. Crim. P. 32.3, and summarily dismissed it, finding the claim to be precluded. The superior court further denied Ferguson's motion for reconsideration. This petition for review followed.

¶4 On review, Ferguson again argues the trial court could not impose lifetime probation and instead could impose only a five-year term. Even if Ferguson were correct, he cannot raise this sentencing claim in an untimely and successive proceeding. Ariz. R. Crim. P. 32.2(a), 32.4(a); *State*

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*v. Shrum*, 220 Ariz. 115, 117-20, ¶¶ 10-23, (2009). Thus, the superior court did not err in summarily dismissing the petition.

¶5 Although we grant review, we deny relief.



Ruth A. Willingham · Clerk of the Court  
FILED : AA