

NOTICE: NOT FOR PUBLICATION.
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

HAROLD EUGENE MARKLAND, *Petitioner*.

No. 1 CA-CR 12-0649 PRPC
FILED 11-19-2013

Appeal from the Superior Court in Maricopa County
No. CR2006-006142-001
The Honorable David B. Gass, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Shaheen P. Torgoley

Counsel for Respondent

Harold Eugene Markland, Globe

Petitioner in propria persona

STATE v. MARKLAND
Decision of the Court

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Michael J. Brown joined.

K E S S L E R, Judge:

¶1 A jury convicted petitioner Harold Eugene Markland of aggravated assault and attempted kidnapping. The trial court sentenced him to an aggregate term of twelve years' imprisonment and this Court affirmed his convictions and sentences on direct appeal in *State v. Markland*, 1 CA-CR 06-0978 (Ariz. App. Aug. 26, 2008). Markland now seeks review of the summary dismissal of his second petition for post-conviction relief proceeding. We review the summary dismissal of a petition for post-conviction relief for abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9(c).

¶2 In his petition for review, Markland argues that his trial counsel was ineffective when he failed to move to dismiss based on a violation of Markland's right to a speedy trial; when counsel failed to file a motion in limine to exclude evidence of Markland's relationship with a minor; and when counsel failed to move for mistrial after a detective was unable to complete his testimony. To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show prejudice, a defendant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. Strategic choices of counsel, however, "are virtually unchallengeable." *Id.* at 690-91.

¶3 We deny relief. Markland could have raised these issues in his first post-conviction relief proceeding, a proceeding Markland chose to initiate while his direct appeal was pending and which the trial court dismissed in 2009. Any claim a defendant could have raised in an earlier post-conviction relief proceeding is precluded. Ariz. R. Crim. P. 32.2(a). None of the exceptions under Rule 32.2(b) apply and Markland does not contend otherwise. Although the State did not argue preclusion and the trial court did not find that the issues were precluded, "any court on

STATE v. MARKLAND
Decision of the Court

review of the record may determine and hold that an issue is precluded regardless of whether the state raises preclusion.” Ariz. R. Crim. P. 32.2(c).

¶4 Even ignoring preclusion, we deny relief. The trial court dismissed the petition for post-conviction relief in an order that clearly identified and correctly ruled upon the issues raised. Further, the court did so in a thorough, well-reasoned manner that will allow any future court to understand the court's rulings. Under these circumstances, “[n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision.” *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Therefore, we adopt the trial court's ruling and deny relief.

¶5 Although the petition for review and reply present additional issues, Markland did not raise those issues in the petition for post-conviction relief he filed below. A petition for review may not present issues not first presented to the trial court. *State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991); Ariz. R. Crim. P. 32.9(c)(1)(ii). Further, this court will not consider arguments or issues first raised in a reply. See *State v. Watson*, 198 Ariz. 48, 51, ¶ 4, 6 P.3d 752, 755 (App. 2000).

¶6 Accordingly, we grant review and deny relief.



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