

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

RICHARD JAMES KIRTLEY, *Petitioner*.

No. 1 CA-CR 15-0144 PRPC  
FILED 3-14-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2008-180683-001  
The Honorable Cari A. Harrison, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Richard James Kirtley, San Luis  
*Petitioner*

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**MEMORANDUM DECISION**

Judge James P. Beene delivered the decision of the Court, in which  
Presiding Judge Diane M. Johnsen and Judge Margaret H. Downie joined.

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STATE v. KIRTLEY  
Decision of the Court

B E E N E, Judge:

¶1 Petitioner Richard James Kirtley petitions this Court for review from the summary dismissal of his second petition for post-conviction relief. A jury found Kirtley guilty of four drug offenses and the trial court sentenced him to an aggregate term of twelve years' imprisonment. This Court affirmed Kirtley's convictions and sentences on direct appeal. Kirtley argues his trial counsel and his first post-conviction relief counsel were ineffective.

¶2 We deny relief. Kirtley could have raised the claims of ineffective assistance of trial counsel in his first post-conviction relief proceeding in 2013. 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. Regarding ineffective assistance of post-conviction relief counsel, a defendant is not entitled to effective assistance of counsel in a post-conviction relief proceeding unless the proceeding was an "of-right" proceeding. *State v. Pruett*, 185 Ariz. 128, 131 (App. 1995). Kirtley's first proceeding was not an "of-right" proceeding. Finally, the trial court dismissed Kirtley's first post-conviction proceeding in April 2014 and Kirtley did not file his second notice of post-conviction relief until January 2015. Therefore, his claims are also untimely. Ariz. R. Crim. P. 32.4(a).

¶3 We grant review but deny relief.



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