

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

WILLIAM FRANKLIN ELY, *Petitioner*.

No. 1 CA-CR 15-0563 PRPC
FILED 6-6-2017

Petition for Review from the Superior Court in Yavapai County
No. P1300CR930389
The Honorable Cele Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Yavapai County Attorney's Office, Prescott
By Sheila Sullivan Polk
Counsel for Respondent

William Franklin Ely, Florence
Petitioner

MEMORANDUM DECISION

Judge Jennifer B. Campbell delivered the decision of the Court, in which
Judge Diane M. Johnsen and Judge Patricia K. Norris joined.

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CAMPBELL, Judge:

¶1 William Franklin Ely petitions for review of the summary dismissal of his petition for post-conviction relief filed pursuant to Rule 32 of the Rules of Criminal Procedure. We have considered the petition for review and for the reasons stated, grant review but deny relief.

¶2 In 1994, Ely pled guilty, pursuant to a plea agreement, to three counts of attempted molestation of a child. The trial court sentenced Ely to a 15-year term of imprisonment on one count and placed him on lifetime probation on each of the other two counts commencing upon his release from prison. Ely began serving his concurrent terms of probation when he was released from prison in 2004.

¶3 In October 2012, the probation department filed a petition to revoke Ely's probation. Following a hearing, the trial court revoked Ely's probation and sentenced him to two consecutive 15-year prison terms. This court affirmed the probation revocation and sentences. *State v. Ely*, 1 CA-CR 13-0081 (Ariz. App. Jan. 16, 2014) (mem. decision).

¶4 Ely filed a timely notice for post-conviction relief. After his appointed counsel notified the trial court that counsel could find no basis for post-conviction relief, Ely filed a *pro se* petition for post-conviction relief, raising claims of illegal sentence and violation of double jeopardy. In denying relief, the trial court noted that Ely had appealed from his probation revocation and sentencing and ruled his claims were precluded because they could have been raised on appeal.

¶5 On review, Ely argues the trial court erred in denying relief on his claims of illegal sentence and violation of double jeopardy. We review a trial court's denial of post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006). Because Ely could have raised his illegal sentence and violation of double jeopardy claims on direct appeal, the trial court correctly found those claims precluded. Ariz. R. Crim. P. 32.2(a); *see also State v. Herrera*, 183 Ariz. 642, 647 (App. 1995) (holding appellate counsel's waiver of other issues on appeal binds a defendant and these waived issues cannot be resurrected in a subsequent post-conviction relief proceeding). Thus, there was no abuse of discretion by the trial court in denying relief on these claims.

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Accordingly, we grant review, but deny relief.



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