IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

GEARY WAYNE WALTON, *Petitioner*.

No. 1 CA-CR 16-0139 PRPC
FILED 6-20-2017

Petition for Review from the Superior Court in Maricopa County
No. CR0000-096136
CR0000-097176
CR1987-009953
CR1987-010264
The Honorable Daniel J. Kiley, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Geary Wayne Walton, Florence
Petitioner Pro Se

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Petitioner, Geary Wayne Walton, petitions this court for review from the dismissal of his fifteenth petition for post-conviction relief proceeding. We have considered the petition for review and, for the reasons stated below, grant review and deny relief.

¶2 The factual and procedural history, including citations to Walton's fourteen previous petitions for review, are set forth in *State v. Walton*, 1 CA-CR 14-0354 PRPC, 2016 WL 3600223 (Ariz. App. June 30, 2016) (mem. decision), and need not be repeated here.

¶3 Walton commenced this proceeding on August 11, 2015, by filing a petition for writ of habeas corpus, which the superior court properly treated as a petition for post-conviction relief. In this petition, Walton claims: (1) sexual assault medical exam reports were withheld; (2) damaging hearsay statements were erroneously admitted at trial; (3) newly discovered evidence exists; (4) there has been a significant change in the law – *Crawford v. Washington*, 541 U.S. 36 (2004); (5) ineffective assistance of counsel; and (6) the trial evidence is insufficient to support the guilty verdicts.

¶4 The trial court properly dismissed the petition for post-conviction relief in an order that addressed the issues raised. The trial court found that the claims of ineffective assistance of counsel, admission of hearsay statements, significant change in the law, and sufficiency of the evidence were precluded. The trial court also found that the newly discovered evidence claims were not colorable because either (1) the claim had been previously raised and rejected; (2) the evidence could have been discovered with due diligence; and (3) the evidence (the state's psychologist witness, Dr. Jeffery D. Harrison, lost his professional license twelve years after Walton's trial) was not material and would not entitle Walton to relief

under Rule 32. Walton filed a motion for rehearing, which was denied. He timely petitions this court for review.[1]

¶5 Absent an abuse of discretion or error of law, this court will not disturb the trial court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19, 278 P.3d 1276, 1280 (2012). Walton has failed to show an abuse of discretion. The ineffective assistance of counsel, admission of hearsay statements, sufficiency of the evidence, and significant change in the law claims could have been, or were, presented in previous post-conviction relief proceedings. Any claim that could have been, or was, raised in an earlier post-conviction relief proceeding is precluded. Ariz. R. Crim. P. 32.2(a)(3). *See State v. Shrum*, 220 Ariz. 115, 116, 203 P.3d 1175, 1176 (2009) (noting that a claim not excepted by Rule 32.1(d), (e), (f), (g), or (h) waived if not timely raised); *State v. Peek*, 219 Ariz. 182, 183, ¶ 4, 195 P.3d 641, 642 (2008) (same); *State v. Swoopes*, 216 Ariz. 390, 403, ¶ 41, 166 P.3d 945, 958 (App. 2007). Preclusion is designed to "require[ ] a defendant to raise all known claims for relief in a single petition," *State v. Petty*, 225 Ariz. 369, 373 ¶ 11, 238 P.3d 637, 641 (App. 2010) (citation and internal quotation marks omitted), and thereby "prevent endless or nearly endless reviews of the same case in the same trial court," *Stewart v. Smith*, 202 Ariz. 446, 450, ¶ 11, 46 P.3d 1067, 1071 (2002).

¶6 As to Walton's "newly discovered evidence" claims, the trial court did not abuse its discretion. To the extent the claims were not precluded, Walton failed to set forth a colorable claim. The evidence that Dr. Jeffery D. Harrison lost his professional license twelve years after Walton's trial could not be newly discovered evidence because it did not exist at the time of trial. *See State v. Bilke*, 162 Ariz. 51, 52, 781 P.2d 28, 29 (1989) (stating that to constitute newly discovered evidence, evidence on its face must have existed at time of trial).

---

[1] In his petition, Walton moves for production of the victims' examinations and other materials reviewed by Dr. Jeffrey D. Harrison. He also includes in the appendix a petition for special action. The motion has been denied by a separate order, and this court declined jurisdiction in the special action. *Walton v. Kiley*, 1 CA-SA 16-0061 (Ariz. App. March 8, 2016) (order).

¶7 Accordingly, we grant review but deny relief.

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