

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

GEARY WAYNE WALTON, *Petitioner*.

No. 1 CA-CR 16-0614 PRPC
FILED 7-27-2017

Petition for Review from the Superior Court in Maricopa County

No. CR 0000-096136

CR 0000-097176

CR 1987-009953

CR 1987-010264

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

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Samuel A. Thumma 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 seventeenth petition for post-conviction relief proceeding. We have considered the petition for review and, for the reasons stated, we grant review and deny relief.

¶2 The factual and procedural history, including citations to Walton's previous petitions for review, are set forth in *State v. Walton*, 1 CA-CR 14-0354 PRPC (Ariz. App. June 30, 2016) (mem. decision), and need not be repeated here. Since Walton's last petition for review (1 CA-CR 16-0360 PRPC), he has filed in part, two petitions for post-conviction relief, a motion to clarify post-conviction relief argument, two motions to submit relevant evidence, and a motion for delayed rehearing to suppress and dismiss the indictments.

¶3 In these pleadings, Walton raises most of the same issues he has raised multiple times in previous post-conviction relief proceedings; ineffective assistance of counsel, significant changes in the law, newly discovered evidence, a *Brady v. Maryland*, 373 U.S. 83 (1963) claim, sufficiency of the evidence, and actual innocence. The superior court treated these pleadings as a single post-conviction relief proceeding. Noting that Walton had simply "resurrected claims from previous and unsuccessful Rule 32 proceedings," the superior court found the claims were precluded. The court rejected the actual innocence and significant change in the law claims as not colorable. Walton moved for rehearing, but the motion was denied.

¶4 Walton timely petitions this court for review. 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 trial court is authorized to summarily dismiss a Rule 32 proceeding based on preclusion. Ariz. R. Crim. P. 32.2(a), 32.6(c). Any claim that could have been, or was, raised in an earlier PCR proceeding

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is precluded. Ariz. R. Crim. P. 32.2(a). *See also* Ariz. R. Crim. P. 32.2(b) (listing exceptions).

¶5 Walton’s actual innocence and significant change in the law claims pursuant to Rule 32.1(g) and (h) were properly dismissed even if they were not precluded. A petitioner like Walton, who files a successive notice of post-conviction relief, must state in the notice “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b); *see also State v. Petty*, 225 Ariz. 369, 372-73, ¶ 10, 238 P.3d 637, 640-41 (App. 2010) (explaining that petitioners seeking to raise a non-precluded claim in an untimely or successive petition may do so if there are meritorious reasons for failing to assert the claim in a timely manner or in a previous proceeding). Walton’s convictions were final twenty-five years ago, and he has prosecuted dozens of post-conviction relief actions over that time. In this proceeding, Walton failed to state “meritorious reasons . . . why the claim was not stated in the previous petition or in a timely manner.” *See* Ariz. R. Crim. P. 32.2(b). Thus, the superior court properly summarily dismissed Walton’s petition for post-conviction relief.

¶6 We grant review and deny relief.



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