

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY -2 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0017-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JIMMIE OLIVER BEASLEY, JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR036565

Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

Jimmie Oliver Beasley, Jr.

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Jimmie Beasley, Jr., was convicted in 1992 of attempted child molestation and sexual conduct with a minor under the age of fourteen. The trial court sentenced him to consecutive, aggravated prison terms of fifteen and twenty-five years. Beasley appealed his convictions and sentences, and this court consolidated his appeal with a petition for review of the denial of his first petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We affirmed the convictions and the sentences imposed, and denied relief on review. *State v. Beasley*, Nos. 2 CA-CR 92-0529, 2 CA-CR 93-0089-PR (consolidated) (memorandum decision filed Dec. 21, 1993). Beasley appears to have sought and been denied post-conviction relief four additional times¹ before he filed his most recent petition for post-conviction relief. We granted review of three of those rulings and denied relief. *See State v. Beasley*, No. 2 CA-CR 2002-0291-PR (memorandum decision filed Sept. 19, 2003); *State v. Beasley*, No. 2 CA-CR 2005-0186-PR (decision order filed Mar. 15, 2006); *State v. Beasley*, No. 2 CA-CR 2009-0217-PR (memorandum decision filed Nov. 18, 2009).

¶2 Beasley now seeks review of the trial court's summary dismissal of his fifth petition for post-conviction relief, filed in June 2011, and of the court's denial of his motion for rehearing. He contends the court incorrectly found his claims precluded. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear

¹In one of those instances, we treated Beasley's appeal from the denial of a motion to modify his sentence as a petition for review of the denial of post-conviction relief. *State v. Beasley*, No. 2 CA-CR 2009-0217-PR (memorandum decision filed Nov. 18, 2009).

abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶3 In his petition for review, Beasley argues, inter alia, that the trial court abused its discretion by denying relief on his claims of ineffective assistance of appellate counsel and that he is entitled to relief based on a significant change in the law as set forth in *State v. Bennett*, 213 Ariz. 562, ¶¶ 14-16, 146 P.3d 63, 67 (2006). To the extent Beasley’s petition for post-conviction relief presented claims he either raised or could have raised on appeal or in one of his previous Rule 32 petitions, they are precluded. *See* Ariz. R. Crim. P. 32.2(a) (precluding claims based on any ground finally adjudicated on the merits on appeal or in any previous collateral proceeding, or that has been waived at trial, on appeal, or in any previous collateral proceeding). And, nothing in the petition for review establishes that Rule 32.2(a) is inapplicable to Beasley’s petition filed below or that he should be excused from that rule’s preclusive effect.

¶4 Based on the record before us, we cannot say the trial court abused its discretion in denying Beasley’s petition for post-conviction relief. The court did so in a detailed and thorough minute entry order that clearly identified each of Beasley’s arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to restate it here.² *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

²Although we note a few minor discrepancies in the trial court’s ruling, they are insignificant and do not alter our decision to adopt it. In paragraph five, the court states

¶5

We grant the petition for review but deny relief.

/s/ *Garye L. Vásquez*

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ *Philip G. Espinosa*

PHILIP G. ESPINOSA, Judge

/s/ *Virginia C. Kelly*

VIRGINIA C. KELLY, Judge

we found Beasley’s claims precluded in our 2003 memorandum decision because he did not raise them in his “first” Rule 32 petition. However, we found the claims precluded because he did not raise them “in either of his previous petitions.” *State v. Beasley*, No. 2 CA-CR 2002-0291-PR, ¶ 3 (memorandum decision filed Sept. 19, 2003). In addition, in paragraph seven of its ruling, the court refers to our prior memorandum decision dated May 25, 2010. It appears the court actually intended to refer instead to our decision dated November 18, 2009. *See State v. Beasley*, No. 2 CA-CR 2009-0217-PR (memorandum decision filed Nov. 18, 2009).