

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

JUN 29 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0034-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
VINCENT MENA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GRAHAM COUNTY

Cause No. CR5556

Honorable R. Douglas Holt, Judge

REVIEW GRANTED; RELIEF DENIED

Vincent Mena

Florence
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Petitioner Vincent Mena was convicted after a jury trial in 1992 of two counts of sexual assault, second-degree burglary, kidnapping, and armed robbery. Finding there were aggravating circumstances—amount of trauma to the victim, the vulnerability of the victim on the night of the offense, Mena’s “present and continuing dangerousness,” and the physical harm to the victim—the trial court sentenced Mena to a

combination of aggravated, consecutive and concurrent prison terms, with a presumptive term for the kidnapping conviction. Mena filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in May 2011, after which Mena filed a pro se petition challenging his sentences based on *Blakely v. Washington*, 542 U.S. 296 (2004). This petition for review follows the trial court's denial of post-conviction relief.

¶2 Mena claims again on review that he was entitled to have a jury decide the aggravating circumstances. He argues that *Blakely* should be applied retroactively, relying on the Ninth Circuit Court of Appeals decision in *Bockting v. Bayer*, 399 F.3d 1010 (9th Cir. 2005), in which the court applied the ruling in *Crawford v. Washington*, 541 U.S. 36 (2004), to a case in which the defendant was convicted and sentenced before *Crawford* was decided.

¶3 The trial court denied relief in a minute entry that clearly identified Mena's claim, resolving the issues correctly and in a manner that permitted review by this court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by rehashing the court's order in its entirety; therefore, we adopt the ruling. *Id.* The court correctly concluded Mena was not entitled to relief because his case was final when he sought relief and *Blakely* is not retroactively applicable. *See State v. Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d 629, 635 (App. 2005).

¶4 Mena has not sustained his burden on review of establishing the trial court abused its discretion by denying relief and summarily dismissing his petition. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (trial court vested with discretion to decide whether post-conviction relief warranted and decision not disturbed on review

absent abuse of that discretion). We, therefore, grant his petition for review but deny relief.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge