

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

APR 17 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | 2 CA-CR 2012-0069-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| PATRICK DOWLING, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2003020209001DT

Honorable Andrew G. Klein, Judge

REVIEW DENIED

William G. Montgomery, Maricopa County Attorney
By Linda Van Brakel

Phoenix
Attorneys for Respondent

Patrick Dowling

Buckeye
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Patrick Dowling seeks review of the trial court's order denying what the court characterized as a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. Because Dowling has been released from custody, his petition is dismissed as moot.

¶2 Pursuant to a plea agreement, Dowling was convicted in 2005 of sexual assault and attempted sexual assault. The trial court sentenced him to an aggravated, 8.5-year prison term for sexual assault and, for attempted sexual assault, suspended the imposition of sentence and placed Dowling on lifetime probation. He filed a notice of post-conviction relief, and his appointed counsel advised the court she had reviewed the record and was “unable to find any colorable claims for relief to raise on [Dowling]’s behalf.” Dowling did not timely file a pro per petition for post-conviction relief, and the court dismissed the proceeding. In 2007, Dowling filed a pro per petition for post-conviction relief claiming he was entitled to relief under *Blakely v. Washington*, 542 U.S. 296 (2004), and that his counsel had been ineffective for failing to raise that claim. The court summarily dismissed his petition, concluding his claim was precluded pursuant to Rule 32.2(a). Although Dowling sought review of that ruling, Division One of this court denied review.

¶3 In 2010, Dowling filed in the trial court a “Motion for immediate release from confinement” arguing that the Arizona Department of Corrections (ADOC) did not release him in accordance with the release date calculated by the ADOC time-computation unit. The court denied that motion in January 2011. Dowling then filed a “Motion for R.24.4 Clarification of Court[’]s Order in Change of Plea,” requesting the court “clarify” that he is eligible for earned early-release credits and should be released from custody. The court, characterizing that motion as a successive petition for post-conviction relief, summarily dismissed the motion, concluding Dowling had not raised a

cognizable claim. The court also denied Dowling’s subsequent motion for rehearing and request for appointment of counsel.

¶4 Dowling’s petition for review, which he characterizes as a petition for special action, was transferred to this court for all further proceedings. Dowling asserts the trial court erred in characterizing his motion as a petition for post-conviction relief instead of a motion pursuant to Rule 24.4, Ariz. R. Crim. P., and asks this court to remand the matter to the trial court for it to consider his motion. But Dowling has been released from custody during the pendency of the review. His claim is therefore moot, and we deny review and dismiss his petition. *Cf. State v. Hartford*, 145 Ariz. 403, 405, 701 P.2d 1211, 1213 (App. 1985) (“[W]hen an entire sentence has been served prior to consideration of that sole issue on appeal, the validity of its imposition is a moot question.”) (emphasis omitted). Dowling’s request for attorney fees and costs is denied.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge