

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

AUG -7 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0129-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STEVEN ALLEN BRUNI,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR02082

Honorable Kyle Bryson, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Steven Allen Bruni

Florence
In Propria Persona

K E L L Y, Judge.

¶1 In February 2012, Steven Bruni filed a petition for a writ of habeas corpus in Pinal County in which he maintained he was being illegally detained in the Arizona Department of Corrections because he had been sentenced pursuant to a statute that was not in force in 1979, when he committed his multiple offenses of kidnapping, sexual

assault, sexual abuse, and aggravated assault.¹ The Pinal County Superior Court denied his request for habeas relief and determined that “[d]espite Bruni’s assertions to the contrary, the issues raised by Bruni are sentencing issues, not jurisdictional issues, subject to review in post conviction proceedings before the trial court, not in separate habeas corpus proceedings.” The court then transferred the matter to the Pima County Superior Court, in accordance with Rule 32.3, Ariz. R. Crim. P. That rule provides,

If a defendant applies for a writ of habeas corpus in a trial court having jurisdiction of his or her person raising any claim attacking the validity of his or her conviction or sentence, that court shall under this rule transfer the cause to the court where the defendant was convicted or sentenced and the latter court shall treat it as a petition for relief under this rule and the procedures of this rule shall govern.

Id.

¶2 In addressing Bruni’s claims in the context of Rule 32, the trial court noted he had raised the same claims in his most recent post-conviction relief proceeding, which the court had dismissed in May 2010 after finding his claims untimely and precluded.² The court then dismissed Bruni’s petition, construed pursuant to Rule 32.3 as a Rule 32 petition for post-conviction relief, concluding, “These claims remain untimely and precluded under Rule 32.” This petition for review followed.

¹A full account of Bruni’s jury trial, convictions, and original sentences may be found in *State v. Bruni*, 129 Ariz. 312, 314-15, 630 P.2d 1044, 1046-47 (App. 1981). A procedural history of his numerous post-conviction relief proceedings may be found in *State v. Bruni*, No. 2 CA-CR 2010-0184-PR (memorandum decision filed Oct. 27, 2010), and *State v. Bruni*, No. 2 CA-CR 2008-0257-PR (memorandum decision filed Jan. 28, 2009). We see no need to repeat that history here.

²This court reviewed and upheld the trial court’s dismissal of Bruni’s 2010 Rule 32 proceeding. *Bruni*, No. 2 CA-CR 2010-0184-PR, at ¶¶ 4-5.

¶3 On review, Bruni reasserts his claims and appears to argue the trial court abused its discretion in “refus[ing] to correct an illegal sentence” and in finding his claims precluded, “thereby u[ur]suring the United States Constitution and [the] Arizona Constitution.” We review a court’s summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶4 As we stated in denying relief on the same claim in Bruni’s 2010 petition for review, “claims of an illegal sentence are not exempt from the preclusive effect of Rule 32.2(b).” *State v. Bruni*, No. 2 CA-CR 2010-0184-PR, ¶ 4 (memorandum decision filed Oct. 27, 2010); *see State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (illegal sentence claim precluded by waiver); *State v. Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d 945, 958 (App. 2007) (claim of fundamental error not excepted from preclusion). The trial court correctly dismissed Bruni’s petition for relief. *See Ariz. R. Crim. P. 32.6(c)* (court shall summarily dismiss petition raising only precluded claims).³

³Thus, we affirm the trial court’s dismissal on the sole ground that Bruni’s claim is procedurally precluded. And, although unnecessary to our disposition, we disagree with Bruni’s claim that the enhanced, twenty-eight year sentences imposed for his sexual assault and kidnapping convictions were illegal because his three prior felony convictions were not for “dangerous” offenses as that term was defined by the version of former A.R.S. § 13-604(G) in effect when he committed his offenses. *See* 1978 Ariz. Sess. Laws, ch. 201, § 101. Bruni’s indictment alleged he was subject to enhanced sentences not only because of the dangerous nature of his offenses, pursuant to former § 13-604(G), but also because he was a repeat offender, based on his prior convictions for any felony, pursuant to former § 13-604(B) and (D). *See id.* The record clearly reflects the court’s judgment that Bruni’s felonies were “repetitive with three prior non-dangerous felonies.” *See Bruni*, 129 Ariz. at 315, 630 P.2d at 1047. Thus, the court’s imposition of twenty-eight year prison terms for his class two felony convictions was authorized by former § 13-604(D). *See* 1978 Ariz. Sess. Laws, ch. 201, §§ 101, 105; *see also State v. Trujillo*,

¶5

Accordingly, we grant review, but relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

227 Ariz. 314, ¶¶ 30-37, 257 P.3d 1194, 1201-02 (App. 2011) (collecting cases; repetitive offender convicted of dangerous offense may be “sentenced under either the repetitive or dangerous sentencing structures”).