

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 -2 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0198-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
THOMAS WHITE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200500580

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Thomas White

Tucson
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Thomas White seeks review of the trial court’s order denying his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). White has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, White was convicted of manslaughter and the trial court sentenced him to an enhanced, aggravated, eighteen-year term of imprisonment. Thereafter White petitioned for post-conviction relief, arguing in a pro se supplemental brief that, inter alia, his sentence was erroneous and “excessively harsh.” The court denied relief, and this court granted review of his subsequent petition for review but denied relief. *See State v. White*, 2 CA-CR 2010-0239-PR (memorandum decision filed Oct. 27, 2010).

¶3 In April 2012, White filed another petition for post-conviction relief, arguing as he had in his first petition that the trial court had improperly enhanced his sentence. The court summarily dismissed the petition, finding White’s claim precluded and noting he had failed to “state meritorious reasons” supporting his entitlement to relief in a successive petition as required by Rule 32.2(b). Thereafter, White filed a “motion to vacate” the court’s order, arguing that because Judge Brown had been a prosecutor at the time of White’s sentencing, he “has a conflict” pursuant to *San Paulo v. Am. Tobacco Co.*, 535 U.S. 229 (2002). The court concluded *San Paulo* was inapplicable and denied the motion.

¶4 On review, White argues only that “the fact that Judge Brown was a prosecutor at the time [of his sentencing] mandates reversal.” In support of his position he relies on *Tumey v. Ohio*, 273 U.S. 510 (1927), which he did not cite below and is not applicable, as it stands for the general rule that a judicial officer is disqualified if he or she has an interest in the case at issue.¹ Here, however, even assuming the issue was

¹White also cites the United States Supreme Court’s decision in *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), but does not explain adequately how it is applicable here. *See Ariz. R. Crim. P. 32.9(c)(1)* (petition for review shall contain “[t]he reasons why the petition should be granted” and “specific references to the record”);

properly before the trial court, *see* Ariz. R. Crim. P. 32.6(d), White has not established that Brown had any interest in his case. Indeed, in dismissing White’s motion to vacate, Brown stated he had been a special prosecutor acting in an administrative capacity, had not had any knowledge of White’s case and had not “participate[d] substantially in its prosecution.” In the absence of any evidence to the contrary, we find no abuse of discretion in the court’s denial of that motion. Furthermore, because White’s claims are precluded by his having raised them in his previous petition, *see* Ariz. R. Crim. P. 32.2(a)(2), and because he has not shown any prejudice in Brown’s ruling on the matter, the court did not abuse its discretion in summarily dismissing the petition for post-conviction relief. Therefore, although we grant the petition for review, we deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

State v. Bolton, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to argue issue adequately results in waiver).