

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

JUL 23 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
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| THE STATE OF ARIZONA, |) | 2 CA-CR 2012-0203-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| RICHARD LEE FIELDS, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20081220

Honorable Celé Hancock

REVIEW GRANTED; RELIEF DENIED

Sheila Polk, Yavapai County Attorney
By Dana E. Owens

Prescott
Attorneys for Respondent

Richard Lee Fields

Eddyville, IL
In Propria Persona

ESPINOSA, Judge.

¶1 Pursuant to a plea agreement, petitioner Richard Fields pled guilty to aggravated driving while under the influence of an intoxicant (DUI), with one historical prior felony conviction. He was sentenced to a mitigated, four-year prison term. In this petition for review, he challenges the trial court's December 23, 2010, order denying relief on his second petition for post-conviction relief.

¶2 Fields filed two notices of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., one on March 11, 2009, and a second one on May 12, 2009, the latter of which the trial court dismissed as untimely. Appointed counsel filed a notice with respect to the first, still-pending proceeding, stating she had reviewed the entire record and had found no colorable claim to raise. Fields filed a pro se supplemental petition raising a myriad of claims, most of which were waived by the entry of a valid plea agreement. In an order dated January 6, 2010, the court thoroughly addressed the claims Fields had raised and denied relief, dismissing the petition. Fields sought review of that ruling and another department of this court denied relief. *See State v. Fields*, No. 1 CA-CR 10-0102 PRPC (order dated Aug. 22, 2011).

¶3 In November 2010, however, before this court's ruling on the petition for review, Fields filed a second petition for post-conviction relief, together with a request for a change of judge. In its order dated December 23, 2010, the trial court noted it had denied relief on Fields's first petition for post-conviction relief on January 6, 2010, and that its decision was, at that time, pending review in the court of appeals. The trial court thus found it no longer had jurisdiction of the matter to rule on the request for a change of judge and dismissed the petition as untimely filed.

¶4 Fields filed a notice of appeal from the trial court's dismissal of the petition on January 24, 2011, which, together with his subsequently filed memorandum entitled "Notice to Court" this court regarded as a petition for review pursuant to Rule 32.9, Ariz. R. Crim. P. On review, however, Fields has not sustained his burden of establishing that the trial court abused its discretion by dismissing the petition. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (trial court determines, in exercise of discretion, whether post-conviction relief warranted and absent abuse of that discretion, ruling not disturbed on review). In the petition that is the subject of this review, Fields raised essentially the same claims he had raised in the first petition, which the court had rejected after considering the merits of the claims he had raised. No new claims were raised that would not have been subject to dismissal based on the preclusive effect of Rule 32.2, Ariz. R. Crim. P.

¶5 Moreover, the trial court already had dismissed the first post-conviction proceeding eleven months earlier, in January 2010, and previously, in May 2009, had dismissed the second notice of post-conviction relief as duplicative of the first. Thus, the court correctly concluded it lacked "jurisdiction" of the case, presumably because no post-conviction proceeding was pending, and dismissed the second petition. Fields has not established on review that the court erred as a matter of law or otherwise abused its discretion. His contention that he was denied access to the courts and that his constitutional rights were violated is without merit. And nothing before us supports Fields's assertion that the court was biased against him and conspired with the state to deprive him of a fair proceeding.

¶6 For the reasons stated, although we grant the petition for review, relief is denied.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

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

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