

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

SEP 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0205-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
WALTER JAMES VAN JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR52748

Honorable Michael O. Miller, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Walter J. Van Jr.

Tucson
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Walter Van Jr. was convicted after a jury trial of armed robbery, kidnapping, first-degree burglary, and aggravated assault. This court affirmed the convictions and the sentences imposed on direct appeal in 1998. *State v. Van*, No. 2 CA-CR 96-0550 (memorandum decision filed Jan. 29, 1998). In this petition for review, Van challenges the trial court's denial of relief in what appears to be his fourth post-conviction proceeding pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling absent a clear abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Van has not met his burden of establishing such abuse here.

¶2 Although Van titled his petition one for writ of habeas corpus, the trial court correctly regarded it as a petition for post-conviction relief.¹ The court reviewed the history of this case and Van's previous attempts to seek relief in that court, this court, and the supreme court. The court identified the claims raised in this proceeding and correctly found them precluded, *see* Ariz. R. Crim. P. 32.2, and then addressed the merits of the petition in any event. The court need not have addressed Van's claims. But because the court's ruling on the merits appears to be correct and because Van has not persuaded us the court abused its discretion in finding the claims precluded and dismissing his petition, we have no basis for disturbing that ruling.

¹Although the trial court stated at the end of its ruling that it was dismissing Van's notice of post-conviction relief, we believe the court simply misspoke and had regarded the document Van filed as a combined notice and petition for post-conviction relief. The court began the ruling by referring to Van's petition as a petition for post-conviction relief. Additionally, in the petition, Van attempted to fully brief the claims he was raising.

¶3

We grant the petition for review, but we deny Van's request for relief.

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

CONCURRING:

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

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