

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 24 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0241-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v.)	Not for Publication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, Judge

REVIEW GRANTED; RELIEF DENIED

Richard Lee Fields

Eddyville, IL
In Propria Persona

K E L L Y, 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 order denying relief on what he called a "Petition for Habeas Corpus to Vacate Judgement & Restitution," his third 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. In an order dated January 6, 2010, the court thoroughly addressed the claims Fields had raised in a pro se petition and denied relief, dismissing the petition. Fields sought review of that ruling and another department of this court denied review. *See State v. Fields*, No. 1 CA-CR 10-0102 PRPC (order dated August 22, 2011). He filed a second petition for post-conviction relief in November 2010, which the court denied as untimely on December 23, 2010. This court recently denied relief after Fields sought review of that order. *State v. Fields*, No. 2 CA-CR 2012-0203-PR (memorandum decision filed July 23, 2012).

¶3 In September 2011, Fields filed a petition for a writ of habeas corpus. The state moved to dismiss the petition as "premature" and the trial court denied it on that basis. The state contended the habeas corpus petition was premature because a petition for review to the supreme court was pending on one of Fields's post-conviction proceedings, after the court of appeals had denied review, *Fields*, No. 1 CA-CR 10-0102 PRPC, and the other was pending in the court of appeals, referring to the petition for

review that recently was decided by this court. *Fields*, No. 2 CA-CR 2012-0203-PR. Fields appealed from that order and filed a petition for review.

¶4 If Fields's claims in the petition truly had been in the nature of a habeas petition that is distinguishable from claims cognizable under Rule 32.1, Ariz. R. Crim. P., it is arguable it would have been premature because there had been no ruling from any court invalidating the conviction or vacating Fields's four-year prison term. But based on its contents, Fields's petition was more in the nature of a petition for post-conviction relief pursuant to Rule 32. See Ariz. R. Crim. P. 32.3 (clarifying nature of post-conviction proceedings under Rule 32 and relation to other proceedings; application for writ of habeas corpus that challenges validity of conviction or sentence shall be treated as request for Rule 32 relief). Many of the arguments Fields raised were the same as those he had previously raised in the prior petitions for post-conviction relief. He is precluded from raising these claims yet again and any new claims he raised could have been asserted in such proceedings and are therefore also precluded. See Ariz. R. Crim. P. 32.2(a)(2), (3). Thus, the court did not err or otherwise abuse its discretion by dismissing the petition for writ of habeas corpus, albeit for a different reason than the reason the trial court gave. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (reviewing court will not disturb trial court's ruling on petition for post-conviction relief absent clear abuse of discretion); see also *State v. Burgett*, 226 Ariz. 85, ¶ 1, 244 P.3d 89, 90 (App. 2010) ("abuse of discretion includes an error of law"); *State v. Box*, 205 Ariz. 492, ¶ 13, 73 P.3d 623, 627 (App. 2003) (appellate court may affirm trial court if result is correct, albeit for different reason).

¶5

The petition for review is granted but relief 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