

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 13 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0249-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
ANTHONY WILLIAM COLEMAN JR.,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007132471001DT

Honorable Patricia Ann Starr, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Linda Van Brakel

Phoenix  
Attorneys for Respondent

Anthony William Coleman Jr.

San Luis  
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Anthony Coleman Jr. seeks review of the trial court's order summarily dismissing his successive notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has

abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Coleman has not met his burden of establishing such abuse here.

¶2 Coleman was convicted after a jury trial of second-degree murder and misconduct involving weapons, and the trial court sentenced him to concurrent prison terms, the longest of which was sixteen years. His convictions and sentences were affirmed on appeal. *State v. Coleman*, No. 1 CA-CR 08-0605 (memorandum decision filed Sep. 10, 2009). Coleman filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but was “unable to find a meritorious issue . . . to justify the filing of a Petition in this matter.” Coleman then filed a pro se petition claiming his trial counsel had been ineffective in giving him inaccurate information about a plea offer from the state and by failing to call certain purported alibi witnesses at trial. The court summarily denied Coleman’s petition on June 17, 2011.

¶3 Coleman requested an extension of time to file a petition for review on July 15, but the trial court did not rule on his request. On August 8, he filed a request to “stay” the extension and for permission to file a “supplemental petition for post-conviction relief.” At the same time, he filed a “petition to supplement the original post-conviction relief [petition],” raising several issues based on a stipulation at trial that stated he was not permitted to possess a firearm at the time of his offenses, including a claim that he was innocent of misconduct involving weapons because he was, in fact, permitted to possess a firearm. He also repeated his claim that trial counsel had been ineffective in failing to call several alibi witnesses.

¶4 Coleman additionally filed another notice of post-conviction relief, referring to his “new petition” and raising claims of newly-discovered material facts, a significant change in the law, and actual innocence, also apparently based on issues related to the stipulation and the existence of purported alibi witnesses. The trial court noted that this is Coleman’s second Rule 32 proceeding, filed after “his first Rule 32 proceeding was dismissed on June 17, 2011.” It concluded Coleman had identified no new facts or change in the law and had not “explained how the[ ] witness statements [submitted with his notice] prove that he is innocent of the crimes that led to his convictions.” Thus, the court found he had “fail[ed] to state a claim for which relief can be granted in an untimely Rule 32 proceeding” and summarily dismissed Coleman’s notice.

¶5 In his petition for review, Coleman does not address the trial court’s conclusion that he had not established claims of actual innocence, newly discovered material facts, or a substantial change in the law. Nor does he argue the court erred by implicitly denying his request to supplement his first petition. He instead repeats his claims of ineffective assistance of trial counsel, asserting that counsel was deficient in failing to call alibi witnesses and in agreeing to the stipulation that Coleman was a prohibited possessor at the time of the offenses. But Coleman’s claims of ineffective assistance of counsel are precluded because he either raised them or could have raised them in his first post-conviction relief proceeding. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). And, to the extent Coleman urges in his petition for review that he is actually innocent of

misconduct involving weapons, he did not provide in his notice “meritorious reasons . . . substantiating th[at] claim and indicating why the claim was not stated in the previous petition or in a timely manner.”<sup>1</sup> Ariz. R. Crim. P. 32.2(b). Thus, the trial court did not err in summarily dismissing his notice. *See id.*

¶6 For the reasons stated, although review is granted, relief is denied.

/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

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<sup>1</sup>In addition, the claim plainly is meritless. As we understand his argument, Coleman asserts he had completed the term of probation for his first felony offense, and therefore his right to possess a weapon was restored automatically pursuant to A.R.S. § 13-912. Section 13-912(A) provides that a first-time offender “shall automatically be restored any civil rights that were lost or suspended by the conviction” if that person “[c]ompletes a term of probation or receives an absolute discharge from imprisonment” and “[p]ays any fine or restitution imposed.” But Coleman has provided no evidence supporting his claim that he had completed his probationary term, or that the term had been imposed for his first felony conviction. And § 13-912(A) “does not apply to a person’s right to possess weapons as defined in [A.R.S.] § 13-3101 unless the person applies to a court pursuant to [A.R.S §§] 13-905 or 13-906.” § 13-912(B). Coleman does not assert that he had done so.