

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 31 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0261-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
LEWIS STEVENSON MCDANIEL,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR0000092128

Honorable Daniel G. Martin, Judge

REVIEW DENIED

\_\_\_\_\_  
Lewis McDaniel

San Luis  
In Propria Persona

\_\_\_\_\_  
K E L L Y, Judge.

¶1 Lewis McDaniel seeks review of the trial court’s order summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. For the reasons that follow, we deny review.

¶2 In 1981, McDaniel was convicted after a jury trial of first-degree murder, kidnapping, and robbery. He was sentenced to death for first-degree murder, to concurrent sentences of nine to ten years for kidnapping, and to twenty years to life for robbery. On appeal, the Arizona Supreme Court affirmed his convictions and his sentences for kidnapping and robbery, but reduced his sentence for first-degree murder to life imprisonment without the possibility of parole for twenty-five years, to be served consecutively to his other sentences. *State v. McDaniel*, 136 Ariz. 188, 201, 665 P.2d 70, 83 (1983).

¶3 McDaniel filed petitions for post-conviction relief in 1986 and 1991, raising various claims of ineffective assistance of counsel and newly discovered evidence and attacking the constitutionality of his sentences and the sufficiency of the evidence. In each proceeding, the trial court denied relief and our supreme court denied review. In 2002, McDaniel filed a notice of post-conviction relief raising claims of actual innocence and ineffective assistance of counsel, and again attacking his consecutive sentences. The trial court dismissed the notice, and McDaniel did not seek review of that ruling.

¶4 McDaniel filed the instant petition for post-conviction relief in 2011, claiming that, if given “good time” credit for time served while his appeal was pending, he was eligible for parole on the consecutive life sentence imposed by the supreme court,

but that the Arizona Department of Corrections (ADOC) “shows that [he] is not eligible for parole . . . for at least 10 more years.” The trial court summarily dismissed McDaniel’s petition, finding McDaniel’s claim could not be raised in an untimely and successive petition. The court further determined that, in any event, it lacked authority to determine applicable earned release credits and that the proper course of action would be for McDaniel to pursue a claim against ADOC. Thus, the court concluded, McDaniel had not raised a claim cognizable under Rule 32.

¶5 On review, McDaniel again insists that he is parole-eligible based on “good time” credits under the sentencing statutes in effect at the time he committed his offenses. He does not, however, provide any citation to the record or authority. Nor does he present any cognizable legal argument addressing the bases for the trial court’s ruling that his claim was not cognizable under Rule 32. McDaniel’s failure to provide adequate citations to the record or provide any relevant legal argument justifies our summary refusal to accept review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must comply with rule governing form of appellate briefs and contain “reasons why the petition should be granted” and either an appendix or “specific references to the record”), (f) (appellate review under Rule 32.9 discretionary); *see also* Ariz. R. Crim. P. 31.13(c)(1)(vi) (briefs must contain argument and supporting authority); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for

review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶6 Review 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