

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

NOV 14 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0292-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
THOMAS WHITE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200500580

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Thomas White

Tucson
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Thomas White was convicted of manslaughter in 2006. The trial court sentenced him to an enhanced, aggravated, eighteen-year prison term. The court denied relief on White's first two petitions for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We granted review but denied relief on both of White's petitions for review from the court's denial of post-conviction relief. *See State v. White*, No. 2 CA-CR 2012-0198-PR (memorandum

decision filed Aug. 2, 2012); *State v. White*, No. 2 CA-CR 2010-0239-PR (memorandum decision filed Oct. 27, 2010).

¶2 While White’s petition for review in his second Rule 32 proceeding was pending in this court, he filed a “Notice of Post-Conviction Relief Counsel Request” in the trial court. In its ruling dismissing White’s notice, the court determined, “[t]o the extent that [White] means this to be a subsequent Notice of Post-Conviction Relief, the Notice does not comply with Rule 32.2(b) and is summarily dismissed.” We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of the court’s discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶3 Before we issued our memorandum decision denying relief on White’s second petition for review, he filed the petition for review now before us. On review, White first asserts that because Judge Brown was a prosecutor at the time “the case was prosecuted,” he should not have presided over the post-conviction proceedings in this matter. White raised this very issue in his motion to vacate, filed in April 2012, shortly after the trial court dismissed his second petition for post-conviction relief. And, in our memorandum decision denying relief on White’s second petition for review, we addressed that claim on the merits, finding it both precluded, *see* Ariz. R. Crim. P. 32.2(a)(2), and without merit. *White*, No. 2 CA-CR 2012-0198-PR, ¶¶ 3-4. Moreover, because White did not raise this claim in the notice of post-conviction relief upon which this petition for review is based, it is not properly before us on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review limited to “issues which were decided by the

trial court”); *see also State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (issues may not be raised properly for first time in petition for review).

¶4 White also generally argues the trial court erroneously dismissed his notice of post-conviction relief, in which he obliquely referred to the United States Supreme Court’s decision in *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), apparently for the proposition that counsel should be appointed to represent him to present a claim of actual innocence. Because White raised a claim based on *Martinez* in his second post-conviction petition, he is precluded from doing so now. *See* Ariz. R. Crim. P. 32.2(a)(2).

¶5 We grant the petition for review but deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.