

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
DEC 11 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0366-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CLARENCE E. RHODES, JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200600580

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Clarence E. Rhodes, Jr.

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Clarence Rhodes was convicted of murder and aggravated assault for crimes committed in 2005. The trial court sentenced him to consecutive, presumptive prison terms of sixteen and 7.5 years. In 2007, Rhodes filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and the court appointed counsel to represent him. After appointed counsel filed a notice advising

that she had reviewed the record and had been unable to find any “colorable claims pursuant to Rule 32,” the court granted Rhodes an extension to prepare a pro se petition. The court dismissed Rhodes’s supplemental petition in 2008, noting he had not raised any legal issues, but had argued “the two prison sentences he received . . . should be run concurrently rather than consecutively on the grounds of remorse and positive changes in his life,” matters which the court noted had been presented to the sentencing court at the aggravation/mitigation hearing.¹

¶2 In January 2012, almost four years after the trial court had dismissed Rhodes’s first petition for post-conviction relief, he filed a petition for writ of habeas corpus, which the court treated as a petition for post-conviction relief. The court appointed new counsel, who notified the court he had reviewed the record and could find “no colorable claims” to raise under Rule 32. The court ordered counsel to remain in an advisory capacity and granted Rhodes an extension to prepare a pro se supplemental petition. Rhodes now seeks review of the court’s dismissal of that petition. Absent a clear abuse of discretion, we will not disturb the trial court’s ruling on post-conviction relief. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶3 Rhodes argues on review, as he did below, that trial and his first Rule 32 counsel were ineffective for failing to assert he is entitled to concurrent sentences and that

¹Notably, the sentencing judge also had considered and denied Rhodes’s motion to modify sentence at a post-sentencing hearing in December 2006, rejecting his request to impose concurrent sentences and again confirming it indeed had intended to impose consecutive sentences.

because the sentencing order provides consecutive sentences “to date from this date, November 6, 2006,” both sentences began to run on that date, and he essentially has completed serving the shorter, 7.5-year sentence. Rhodes also contends his sentences violate the prohibition against double jeopardy. In a thorough, well-reasoned decision and order, the trial court identified the claims Rhodes had raised and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded the claims raised either were not colorable or were precluded pursuant to Rule 32.2. No purpose would be served by restating the court’s ruling in its entirety. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Rather, we adopt the ruling.

¶4 Accordingly, we grant the petition for review but deny 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