

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

OCT 22 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0369-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ERIC DEWAYNE PHILLIPS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2005127287002DT

Honorable Andrew G. Klein, Judge

REVIEW GRANTED; RELIEF DENIED

Eric D. Phillips

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Eric Phillips was convicted in 2006 of armed robbery, and the trial court sentenced him to an aggravated thirteen-year prison term. In the time period between 2006 and 2011, Phillips filed five¹ notices of post-

¹Although the trial court refers to the underlying notice as Phillips's sixth notice, because it referred to the notice immediately preceding this one as his fourth, it appears this may be a misstatement.

conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The court dismissed each proceeding, the last of which is the subject of the petition for review now before us. We will not disturb a court's ruling on post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no such abuse here.

¶2 Although Phillips deems the petition before us as a petition for review from the trial court's October 27, 2011 ruling, in which the court dismissed his October 24, 2011, fifth notice of post-conviction relief, he refers instead to the arguments he raised in his May 26, 2011, fourth notice, which the court dismissed on June 16, 2011. As the court correctly noted in its October 27 ruling, Phillips's notice is, in essence, an untimely motion asking the court to reconsider² its dismissal of Phillips's fourth notice rather than a new notice of post-conviction relief.

¶3 In its minute entry dismissing Phillips's fifth notice, the trial court first briefly summarized the procedural history of the case. The court then concluded correctly that Phillips had not set forth a colorable claim for post-conviction relief. Based on the record before us, we cannot say the court abused its discretion in dismissing Phillips's notice. The court did so in a detailed ruling that clearly identified Phillips's arguments and correctly ruled on them in a manner that will allow any court in the future to understand their resolution. We therefore approve and adopt the court's ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

²The court apparently intended to refer to this as a motion for rehearing rather than a motion for reconsideration. *See* Ariz. R. Crim. P. 32.9(a).

¶4

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