

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 13 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0421-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL EUGENE VICKREY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200800470

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Michael E. Vickrey

Florence
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Michael Vickrey was convicted after a jury trial of child molestation and sexual conduct with a minor. This court affirmed his convictions and the sentence imposed on appeal. *State v. Vickrey*, No. 2 CA-CR 2009-0328 (memorandum decision filed June 11, 2010). We subsequently granted review of his petition for review of the denial of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., but denied relief. *State v. Vickrey*, No. 2 CA-CR 2011-0318-PR (memorandum decision filed Dec. 28, 2011). In this petition for review, Vickrey challenges the trial court’s order summarily dismissing his successive notice of and petition for post-conviction relief. We review the court’s ruling for a clear abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 In the petition for post-conviction relief Vickrey filed in August 2012 simultaneously with his notice of post-conviction relief, he asserted he had been “deprived of [his] right to a copy of the complete file,” referring to minute entry orders entered in July 2011 in the initial post-conviction proceeding. Vickrey’s counsel in that proceeding had filed a notice stating she had found no colorable claim to raise and had requested that Vickrey be permitted to file a pro se petition. Vickrey seems to be asserting in this proceeding that he never received a copy of his complete case file even though the trial court had ordered counsel to provide it to him, and that he had been required to file his pro se petition in the first proceeding before he ever was able to obtain that complete file.

¶3 The trial court dismissed the notice and the petition in this proceeding, finding the successive notice was untimely and that the petition failed to comply with the requirements of Rule 32.2(b). In his petition for review, Vickrey reasserts the claim he raised in the petition, again contending he was not provided with a copy of his complete file and requesting that he be permitted to file a “subsequent” petition for post-conviction relief once he has had an opportunity to review his complete file. Vickrey has not established the trial court abused its discretion by summarily dismissing the petition on the basis of preclusion pursuant to Rule 32.2.

¶4 Although the trial court’s ruling is correct, we point out that the claim Vickery raised in this proceeding was not cognizable under Rule 32.1. In addition, his complaints were addressed in the first post-conviction proceeding by the court’s rulings related to Vickery’s requests for production of his file. Vickery presumably was referring to that proceeding when he complained in his successive petition for post-conviction relief he had been required to file his pro se petition without access to a complete file. Any complaints about matters regarding the production of Vickery’s file that remained unresolved in the first proceeding could not be raised in a new post-conviction proceeding. Rather, such complaints had to be raised in the same proceeding about which he is complaining and either in the petition for review that followed the denial of post-conviction relief—to challenge the orders denying Vickery’s requests for his file—or, perhaps, in a special action petition—to challenge the denial of Vickery’s motion for an order to show cause regarding contempt against trial counsel. *See Elia v. Pifer*, 194 Ariz.

74, ¶30, 977 P.2d 796, 802 (App. 1998) (acknowledging generally that “orders adjudicating whether a person should be held in contempt for refusing to obey a court order are . . . reviewable in appropriate circumstances by special action”).

¶5 For the reasons stated, we grant the petition for review but deny relief.

/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