

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GREGORY ALLEN BEVEL,
Petitioner.

No. 2 CA-CR 2016-0170-PR
Filed August 2, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20011537
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Gregory A. Bevel, Florence
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

¶1 Petitioner Gregory Bevel seeks review of the trial court's order dismissing his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Pursuant to a plea agreement, Bevel was convicted of sexual conduct with a minor, a dangerous crime against children committed in 2001, and sexual conduct with a minor in the second degree, a preparatory dangerous crime against children committed in 1999. In 2002, the trial court sentenced Bevel to an aggravated, twenty-five year sentence on the first count, to be followed by lifetime probation on the second count.

¶3 In 2010, Bevel sought post-conviction relief raising several claims including, *inter alia*, claims challenging his sentence. Pursuant to Bevel's petition for review of the trial court's denial of that petition, we granted review but denied relief. *State v. Bevel*, 2 CA-CR 2011-0296-PR (Ariz. App. Feb. 17, 2012) (mem. decision). Bevel filed a successive Rule 32 petition in 2015, again challenging his sentence. The court also denied that petition. Bevel did not seek review of that ruling. In 2016, he filed his third and most recent petition, again challenging his sentence. The court summarily denied that petition, finding Bevel had "failed to present a material issue of fact or law that would entitle him to an evidentiary hearing and failed to state a colorable claim for relief on any basis." This petition for review followed.

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¶4 On review, Bevel argues the trial court abused its discretion by denying relief, reasserting the argument he raised below, which is essentially the same argument he raised in his second post-conviction proceeding. Not only is this most-recent proceeding patently untimely, *see* Ariz. R. Crim. P. 32.4(a), Bevel’s claims are plainly precluded, *see* Ariz. R. Crim. P. 32.2(a)(2), (3) (precluding claims based on any ground “[f]inally adjudicated on the merits . . . in any previous collateral proceeding” or “[t]hat has been waived . . . in any previous collateral proceeding.”). In addition, Bevel has failed to establish how the court erred by denying his claim. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall contain “reasons why the petition should be granted”). Moreover, Bevel has not asserted his claim falls within one of the exceptions to timeliness pursuant to Rule 32.4(a) or preclusion identified in Rule 32.2(b).¹

¶5 Nothing in Bevel’s petition suggests the trial court abused its discretion in denying his third post-conviction petition. Accordingly, although we grant review, we deny relief.

¹In some circumstances, claims raised pursuant to Rule 32.1(d) through (h) are exempt from the timeliness requirement of Rule 32.4(a) and from preclusion pursuant to Rule 32.2. Although Bevel made a cursory reference in his petition below to Ariz. R. Crim. P. 32.1(e) and (f) (newly discovered evidence; untimely filing without fault on defendant’s part), because he does not refer to these claims on review, we do not address them.