

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CHASTABEAR WILLIAM PARKER,
Petitioner.

No. 2 CA-CR 2016-0177-PR
Filed June 7, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2011130043001SE
The Honorable Cynthia J. Bailey, Judge

REVIEW GRANTED; RELIEF DENIED

Chastabear Parker, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

STARING, Judge:

¶1 Chastabear Parker petitions this court for review of the trial court's order summarily 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 in 2012, Parker was convicted of sexual conduct with a minor and two counts of sexual abuse, all dangerous crimes against children. The trial court imposed consecutive, presumptive prison terms totaling ten years, with 288 days of presentence incarceration credit, to be followed by lifetime probation. Parker sought post-conviction relief and appointed counsel notified the court he could find no colorable claims to raise in a Rule 32 proceeding. The court granted Parker an opportunity to file a pro se petition by November 2012, but dismissed the Rule 32 proceeding in January 2013 when Parker had failed to do so.¹ In March 2013, Parker filed a petition requesting "leave to proceed with a new Rule 32" petition. The court treated that pleading as a second notice of post-conviction relief, which it dismissed in April 2013, finding it to be successive and untimely, and noting Parker had not stated a claim which could be raised in such a petition. *See* Ariz. R. Crim. P. 32.4(a).

¹The trial court subsequently denied Parker's petition for an extension of time to file a pro se petition and his request for additional discovery.

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¶3 In May 2014, Parker filed a “Motion” for post-conviction relief, raising various constitutional claims, including that his trial counsel had been ineffective and his *Miranda* rights² had been violated.³ The trial court summarily dismissed the petition, finding Parker was precluded from raising his claims, noting he had “fail[ed] to state a claim for which relief can be granted in an untimely Rule 32 proceeding,” and denying his request for additional discovery. *See* Ariz. R. Crim. P. 32.4(a).

¶4 In his petition for review, Parker essentially restates the arguments he raised below, contends the trial court abused its discretion by dismissing his claims based on preclusion, and maintains he is entitled to an evidentiary hearing. Because Parker could have raised his claims in a previous post-conviction proceeding, the court correctly found them precluded. *See* Ariz. R. Crim. P. 32.2(a)(3). Moreover, by entering a guilty plea, a defendant waives all non-jurisdictional defects and defenses, like the constitutional claims Parker has raised. *State v. Flewellen*, 127 Ariz. 342, 345, 621 P.2d 29, 32 (1980). And, such waiver also includes claims of ineffective assistance of counsel, except those that relate to the validity of a plea.⁴ *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993).

¶5 Accordingly, we grant review but deny relief.

²*See Miranda v. Arizona*, 384 U.S. 436 (1966).

³Although Parker suggested his “motion” was based on newly discovered evidence and actual innocence pursuant to Rule 32.1(e) and (h), he did not present any meaningful arguments to support such claims.

⁴To the extent Parker suggests “his plea agreement was rendered ‘void’ by the actions of his defense counsel (I.A.C.),” he is, in any event, precluded from raising this claim in a successive Rule 32 proceeding. *See State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (generally, defendant must raise claims of ineffective assistance of counsel, if at all, in initial Rule 32 proceeding).