

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

LEONARD TURNER,  
*Petitioner.*

No. 2 CA-CR 2016-0301-PR  
Filed January 6, 2017

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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NOT FOR PUBLICATION  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.*

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Petition for Review from the Superior Court in Pima County  
No. CR20131783001  
The Honorable Richard D. Nichols, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Leonard Turner, Douglas  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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H O W A R D, Presiding Judge:

¶1 Leonard Turner seeks review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Turner has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Turner was convicted of aggravated driving with an alcohol concentration (BAC) of .08 or more while his license was suspended, revoked, or restricted; aggravated driving under the influence (DUI) while his license was suspended, revoked, or restricted; aggravated DUI having committed two or more prior DUI violations; and aggravated driving with a BAC of .08 or more having committed two or more prior DUI violations. The trial court sentenced him to enhanced, presumptive, concurrent prison terms, each of which was ten years. This court affirmed his convictions and sentences on appeal. *State v. Turner*, No. 2 CA-CR 2014-0394 (Ariz. App. Dec. 7, 2015) (mem. decision).

¶3 Turner sought post-conviction relief, arguing: (1) the breathalyzer used in his case had “malfunction[ed]”; (2) the indictment was “flawed” because the “charges were piled on from one single stop”; (3) the jury foreperson had a “conflict of interest”; (4) his sentence was improperly enhanced based on felonies committed more than ten years ago; (5) the sentences imposed were greater than that recommended in the presentence report; (6) the state violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose a police report; (7) the traffic stop leading to his convictions was not supported by probable cause; and (8) his Sixth Amendment

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right to confront evidence was violated.<sup>1</sup> The trial court summarily denied relief, finding the majority of Turner's claims precluded pursuant to Rule 32.2(a). The court construed Turner's claim regarding the breathalyzer as a claim pursuant to Rule 32.1(h) and thus exempt from preclusion. *See* Ariz. R. Crim. P. 32.2(b). The court rejected that claim, however, concluding "the facts underlying the case were sufficient for a reasonable fact-finder to find [Turner] guilty beyond a reasonable doubt." This petition for review followed the court's denial of Turner's motion for reconsideration.

¶4 On review, Turner repeats several of his claims. He does not argue, however, that the trial court erred in finding the bulk of those claims precluded. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). Nor does he assert the court erred in concluding he had not met his burden under Rule 32.1(h). Therefore, we deny relief on those claims.

¶5 Turner additionally argues a witness committed perjury by testifying the breathalyzer was functioning properly. He did not raise this argument in his petition below and, accordingly, we do not address it. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain "issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review"); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review claims not raised below).

¶6 Turner further contends his due process rights were violated because the trial court accepted the state's response more than forty-five days after he had filed his petition for post-conviction relief. Turner is correct that Rule 32.6(a) requires the state to file its response within forty-five days "after the filing of the petition" for post-conviction relief. In granting appointed counsel's motion to withdraw, the court also granted counsel's request that Turner be given ninety days to file a pro se petition. Turner then filed a

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<sup>1</sup> The trial court initially appointed counsel to represent Turner, but granted counsel's motion to withdraw based on Turner's desire to proceed pro se.

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motion to “preclude” the state’s response after forty-five days had passed from the filing of his original petition. The state filed its response shortly thereafter.

¶7 The trial court denied Turner’s motion, noting it had provided Turner time to “supplement his initial *pro se* petition” and concluding the state had timely filed its response upon receiving Turner’s motion to preclude, prompting the state to “surmise that [Turner] was declining to file a supplement.” Even if we found some error in this procedure, Turner has not explained how it violated his right to due process. See *Willie G. v. Ariz. Dep’t of Econ. Sec.*, 211 Ariz. 231, ¶ 18, 119 P.3d 1034, 1038 (App. 2005). (“The essential requirements of procedural due process are reasonable notice and an opportunity to be heard.”). Thus, we do not address this argument further. See *State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).

¶8 We grant review but deny relief.