

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAMIEN CHARLES BODDY,
Petitioner.

No. 2 CA-CR 2017-0164-PR
Filed June 20, 2017

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NOT FOR PUBLICATION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 Yuma County
No. S1400CR201100807
The Honorable Lawrence C. Kenworthy, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Jon R. Smith, Yuma County Attorney
By William P. Katz, Deputy County Attorney, Yuma
Counsel for Respondent

Damien Charles Boddy, Florence
In Propria Persona

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MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Petitioner Damien Boddy seeks review of the trial court's order dismissing his proceeding for post-conviction relief, initiated pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling" in a post-conviction-relief proceeding "absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Boddy has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Boddy was convicted on one count of sexual assault. The trial court sentenced him to a presumptive, seven-year term of imprisonment, and the conviction and sentence were affirmed on appeal. *State v. Boddy*, No. 1 CA-CR 12-0461 (Ariz. App. Aug. 13, 2013) (mem. decision). Boddy thereafter sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and found "no colorable claims to raise in a petition for post-conviction relief."

¶3 Boddy filed a pro-se supplemental petition, and the state moved to strike the petition because it failed to comply with Rule 32.5. The trial court concluded the petition did not comply with the rule and ordered it returned to Boddy with thirty days in which to file a compliant petition. When he failed to file a new petition, the court dismissed the proceeding. The dismissal order was returned to the court as undeliverable.

¶4 On review, Boddy asserts he "never received the original petition from the [trial] court," and it was "not clear what the court wanted." He contends that as a layperson, he was unaware of what Rule 32.5 required. But, in its order the court

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referenced the state's objection, to which Boddy replied, and stated Boddy's petition had failed to note facts within his personal knowledge separately and had not included record citations. And in his reply to the state's response, Boddy asked the court if he "really ha[d] to go through specific word for word documents" and stated "it would be monotonous to explain to the court every time" what had happened. Having received that document from Boddy, the court issued its order.

¶5 Boddy now asserts he thought "maybe the [trial] court [wa]s actually considering his claims because of the [reply], when all of a sudden the court[] dismis[s]e[d] his petition." But the court's order to correct his petition was filed after his reply, and it was nearly six months later that the court ultimately dismissed the proceeding. Boddy had ample opportunity in that time to alert the court to his uncertainty or to request additional time, or a copy of his previously submitted petition for review, to comply with the court's order. On the record before us, we cannot say the court abused its discretion in dismissing the proceeding when Boddy remained silent and filed no petition after being ordered to do so.

¶6 Although we grant the petition for review, relief is denied.