

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JON ANTHONY SCHWEDER,  
*Petitioner.*

No. 2 CA-CR 2023-0231-PR  
Filed May 2, 2024

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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NOT FOR PUBLICATION  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. 31.19(e).*

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Petition for Review from the Superior Court in Navajo County  
No. CR20090633  
The Honorable Melinda K. Hardy, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Jon Anthony Schweder, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

Judge O’Neil authored the decision of the Court, in which Vice Chief Judge Staring and Judge Sklar concurred.

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O’NEIL, Judge:

¶1 Petitioner Jon Schweder seeks 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 that order unless the court abused its discretion. *State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Schweder has not met his burden of establishing such abuse here.

¶2 After a 2010 jury trial, Schweder was convicted of five counts of sexual conduct with a minor. The trial court sentenced him to five consecutive thirteen-year prison terms. This court affirmed his convictions and sentences on appeal. *State v. Schweder*, No. 1 CA-CR 11-0028 (Ariz. App. Mar. 20, 2012) (mem. decision). Schweder later sought—and was denied—post-conviction relief numerous times. This court denied relief on review in at least four of those proceedings. *State v. Schweder*, No. 1 CA-CR 22-0267 PRPC (Ariz. App. Jan. 10, 2023) (mem. decision); *State v. Schweder*, No. 1 CA-CR 22-0054 PRPC (Ariz. App. May 3, 2022) (mem. decision); *State v. Schweder*, No. 1 CA-CR 18-0317 PRPC (Ariz. App. Sept. 11, 2018) (mem. decision); *State v. Schweder*, No. 1 CA-CR 13-0496 PRPC (Ariz. App. Mar. 11, 2015) (mem. decision).

¶3 Schweder filed the current notice of and petition for post-conviction relief in August 2023. He argued that his convictions violate the federal constitution because the statutes under which he was convicted and sentenced are unconstitutional; that his sentence of sixty-five years in prison violates the Eight Amendment’s prohibition against cruel and unusual punishment; that his convictions violate his right against double jeopardy; and that his right to a fair trial had been violated because the state failed to disclose “exculpatory and impeaching evidence regarding ‘phone records’” and the trial court denied his “request for disclosure of ‘phone records.’”

¶4 The state filed a motion to dismiss Schweder’s petition, reasoning that his claims “all challenge the constitutionality of his

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convictions and sentences and thus fall within Rule 32.1(a),” making his petition untimely and his claims precluded. In response to the state’s motion, Schweder argued that his claims could be raised at that time because they fell within Rule 32.1(c), (f), and (h).

¶5 In September 2023, the trial court dismissed Schweder’s petition, concluding that his notice and petition were untimely and his claims were “precluded and alternatively meritless.” This petition for review followed.

¶6 On review, Schweder repeats his claims. He also argues that the trial court erred by finding them precluded because “he previously did not know and could not reasonably have known the factual bases for his claims.” He seems to suggest that his claims arise under Rule 32.1(f) and are excepted from the rule of preclusion.

¶7 Rule 32.1(f) provides post-conviction relief for a defendant when “the failure to timely file a notice of appeal was not the defendant’s fault.” Here, Schweder filed a timely notice of appeal in November 2010, and this court considered his appeal at that time. *State v. Schweder*, No. 1 CA-CR 11-0028 (Ariz. App. Mar. 20, 2012) (mem. decision). Rule 32.1(f) does not apply here.

¶8 Schweder’s claims are all constitutional claims and therefore fall under Rule 32.1(a). “A defendant is precluded from relief under Rule 32.1(a) based on any ground” that has been “waived at trial or on appeal, or in any previous post-conviction proceeding, except when the claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.” Ariz. R. Crim. P. 32.2(a)(3). “A defendant must file the notice for a claim under Rule 32.1(a) within 90 days after the oral pronouncement of sentence or within 30 days after the issuance of the mandate in the direct appeal, whichever is later.” Ariz. R. Crim. P. 32.4(b)(3)(A). However, the court must excuse an untimely notice for a claim under Rule 32.1(a) “if the defendant adequately explains why the failure to timely file a notice was not the defendant’s fault.” Ariz. R. Crim. P. 32.4(b)(3)(D).

¶9 Because Schweder could have raised his claims at trial, on appeal, or in his previous post-conviction proceedings, they are now precluded. *See State v. Macias*, 249 Ariz. 335, ¶ 20 (App. 2020) (defendant waived right to challenge constitutionality of statutes in post-conviction proceeding by failing to raise argument at trial or on appeal). Even if Schweder’s claims implicated constitutional rights requiring a knowing,

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voluntary, and personal waiver, his notice and petition were also untimely because they were filed more than thirty days after the issuance of the mandate in the direct appeal. Although the trial court could have excused the untimeliness, it declined to do so, apparently finding his reason for the tardy filing—that his claims “were previously unknown to him”—inadequate. We cannot say the court abused its discretion. *See Martinez*, 226 Ariz. 464, ¶ 6.

¶10           Accordingly, we grant review but deny relief.