

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 20 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0412-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
PATRICK ALLEN RUNDHAUG,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR67313

Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Patrick Rundhaug

Tucson
In Propria Persona

H O W A R D, Chief Judge.

¶1 Patrick Rundhaug petitions for review of the trial court's summary denial of his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review but deny relief.

¶2 Pursuant to a plea agreement, Rundhaug was convicted in June 2000 of one count each of fraudulent scheme and artifice and theft, and the trial court suspended the imposition of sentence and imposed a stipulated term of seven years' probation. In June 2007, the state filed a petition to revoke Rundhaug's probation. After Rundhaug admitted several of the state's allegations, the court revoked his probation and sentenced him to consecutive, aggravated prison terms of ten years for the fraudulent scheme and artifice and two years for the theft. The court later vacated the sentence for the theft conviction as a result of Rundhaug's first post-conviction challenge to the probation revocation, and we denied further relief on review. *State v. Rundhaug*, No. 2 CA-CR 2009-0107-PR, ¶¶ 2, 7 (memorandum decision filed Aug. 14, 2009).

¶3 In Rundhaug's second, successive petition for post-conviction relief, filed in propria persona, he alleged ineffective assistance of counsel during his original plea proceedings, his probation revocation proceedings, and his previous, of-right Rule 32 proceeding challenging his probation revocation and disposition. He enumerated a total of twenty-three separate claims alleging the illegality of his sentence, improprieties in the court's imposition of sentence, errors in the court's rulings on motions filed before and after his probation had been revoked, and procedural error.

¶4 The trial court addressed each of Rundhaug's claims in a detailed ruling. First, the court correctly found Rundhaug was precluded from raising claims that his counsel had rendered ineffective assistance during his original plea proceedings and his probation revocation proceedings. The court properly considered, however, whether Rule 32 counsel had been ineffective in failing to allege that Rundhaug had been prejudiced by incompetent counsel during his revocation proceedings. *See State v. Petty*, 225 Ariz. 369, ¶¶ 9-11, 14, 238 P.3d 637, 640-42 (App. 2010) (claim of ineffective

assistance of of-right, Rule 32 counsel, raised in timely, second petition for post-conviction relief, not subject to Rule 32.2, Ariz. R. Crim. P., restrictions). Similarly, although the court found many of Rundhaug's enumerated claims precluded by his failure to raise them in his last Rule 32 proceeding, the court still considered whether Rundhaug had stated a colorable claim of ineffective assistance of Rule 32 counsel based on her omission of those enumerated claims.

¶5 After thorough analysis, the court found Rundhaug had failed to state a colorable claim of ineffective assistance of Rule 32 counsel. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (“To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.”). The court found most of Rundhaug’s other claims were untimely, precluded as waived because they could have been raised in his previous Rule 32 proceeding, precluded because they had been finally adjudicated on the merits in a previous proceeding, or not cognizable grounds for Rule 32 relief. *See* Ariz. R. Crim. P. 32.1 (grounds for relief); 32.2(a)(2), (3) (claims in successive petition precluded if finally adjudicated on merits or waived in previous proceeding); 32.4(a) (untimely claims barred). To the extent Rundhaug maintained some of his claims were warranted by “a significant change in the law that if determined to apply to [his] case would probably overturn [his] conviction or sentence,” Ariz. R. Crim. P. 32.1(g), and therefore were excepted from preclusion, *see* Ariz. R. Crim. P. 32.2(b), the court addressed those arguments appropriately and correctly. In denying relief, the court concluded,

[Rundhaug] has alleged numerous procedural and constitutional defects in his plea, probation revocation and subsequent sentence. His petition exceeds the permitted page limit by eight pages, not including the voluminous appendix.

Ariz. R. Crim. P. 32.5. However, [Rundhaug] has still failed to state a colorable claim upon which relief can be based. His claims are either precluded, frivolous, or both.

In his petition for review, Rundhaug asserts the same arguments he raised below. We will not disturb a court's summary denial of post-conviction relief unless the court has abused its discretion. *Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d at 67.

¶6 We find no abuse of discretion here. Indeed, we are satisfied with the trial court's identification, analysis, and resolution of Rundhaug's claims and see no need to restate or embellish its ruling. Instead, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[']s rehashing the trial court's correct ruling in a written decision").

¶7 Accordingly, although review is granted, relief is denied.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge