

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

MAY 20 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0051-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
BRYAN LAMAR BOOKER,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR57208

Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Bryan Booker

San Luis
In Propria Persona

ECKERSTROM, Judge.

¶1 Following a 1998 jury trial, petitioner Bryan Booker was convicted of first-degree murder and drive-by shooting. After this court reversed Booker's convictions on appeal, *State v. Booker*, No. 2 CA-CR 98-0151, ¶ 1 (memorandum decision filed June 22,

1999), he was retried in 2000 and again found guilty by a jury. The trial court sentenced him to a term of life imprisonment for the first-degree murder and to a concurrent 10.5-year term for the drive-by shooting. The court enhanced both sentences pursuant to former A.R.S. § 13-604(R). On appeal, we affirmed Booker's convictions and sentences but vacated the sentence enhancements after concluding Booker had been entitled to have a jury determine his release status. *State v. Booker*, 203 Ariz. 284, ¶ 1, 53 P.3d 635, 637 (App. 2002), *depublication and reconsideration ordered by* 205 Ariz. 70, 66 P.3d 1247 (2003). We subsequently issued a supplemental decision replacing our previous discussion of premeditation with a new analysis but otherwise affirming our decision and ratifying the disposition ordered. *State v. Booker*, No. 2 CA-CR 2000-0517, ¶ 1 (supp. memorandum decision filed Feb. 23, 2005).

¶2 In 2009, Booker filed a delayed petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., asserting claims of ineffective assistance of trial and appellate counsel. In 2010, we denied relief on Booker's petition for review of the trial court's denial of his post-conviction petition. *State v. Booker*, No. 2 CA-CR 2009-0404-PR, ¶ 8 (memorandum decision filed Apr. 14, 2010). In 2011, Booker again sought post-conviction relief, claiming he is entitled to relief under Rule 32.1(h), which allows relief when "clear and convincing evidence" demonstrates "no reasonable fact-finder would have found [the] defendant guilty of the underlying offense beyond a reasonable doubt." He also raised a claim of prosecutorial misconduct. The trial court dismissed the petition without conducting an evidentiary hearing, and this petition for review followed. "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 abuse here.

¶3 On review, Booker contends the trial court erred in denying relief. He asks that his convictions be vacated, or at the very least, that we remand for an evidentiary hearing. But based on the record before us, we cannot say the trial court abused its discretion in denying Booker’s petition for post-conviction relief. The court denied relief in a detailed and thorough minute entry order that clearly identified Booker’s arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to reiterate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (“No useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision.”).

¶4 We grant the petition for review but deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

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