

**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.

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**MAR -5 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2008-0258-PR
	)	DEPARTMENT A
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
LACY RIDDELL, JR.,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-17839

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Lacy Riddell, Jr.

Florence  
In Propria Persona

PELANDER, Chief Judge.

¶1 After breaking into the home of a ninety-seven-year-old woman and sexually assaulting her, petitioner Lacy Riddell, Jr. was convicted after a jury trial of aggravated assault, robbery, kidnapping, sexual assault, and second-degree burglary. In this petition for

review, he challenges the trial court's order summarily dismissing a successive petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P., on the ground that the claims were precluded. *See* Ariz. R. Crim. P. 32.2. Absent a clear abuse of discretion, we will not disturb the trial court's ruling. *State v. Schrock*, 149 Ariz. 433, 441, 719 P.2d 1049, 1057 (1986).

¶2 Riddell's convictions and the sentences imposed were affirmed by this court on appeal. *State v. Riddell*, Nos. 2 CA-CR 4658-3, 2 CA-CR 4659-4 (consolidated) (memorandum decision filed July 14, 1987). And this court has denied relief on review in at least five other post-conviction proceedings. *State v. Riddell*, No. 2 CA-CR 2006-0431-PR (memorandum decision filed May 14, 2007); *State v. Riddell*, No. 2 CA-CR 2005-0244-PR (memorandum decision filed Mar. 16, 2006); *State v. Riddell*, No. 2 CA-CR 2003-0067-PR (decision order filed Sept. 10, 2004); *State v. Riddell*, No. 2 CA-CR 01-0087-PR (memorandum decision filed Nov. 30, 2001); *State v. Riddell*, No. 2 CA-CR 91-0883 (order filed Feb. 12, 1992). In this proceeding, Riddell challenges the introduction of a videotaped interview on the third day of trial and seems to raise related claims of ineffective assistance of counsel and significant change in the law.

¶3 The trial court did not err when it found precluded the claims raised in this proceeding. Riddell has presented no colorable claim that falls within any of the exceptions to the rule of preclusion. *See* Ariz. R. Crim. P. 32.2. Specifically, he has not persuaded us that the Supreme Court's decision in *Danforth v. Minnesota*, \_\_\_ U.S. \_\_\_, 128 S. Ct. 1029 (2008), is a significant change in the law for purposes of Rule 32.1(g), entitling him to relief

based on *Crawford v. Washington*, 541 U.S. 36 (2004). Additionally, relying in part on *Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002), Riddell suggests fundamental error occurred, his constitutional rights were violated, and his claims are not, therefore, subject to Rule 32.2. He is mistaken. Even assuming, arguendo, error occurred here and the error could be characterized as fundamental, “[n]ot all error that is fundamental involves the violation of a constitutional right that can be waived only if the defendant personally does so knowingly, voluntarily, and intelligently.” *State v. Swoopes*, 216 Ariz. 390, ¶ 41, 166 P.3d 945, 958 (App. 2007). “[I]f our supreme court had intended that fundamental error be an exception to preclusion under Rule 32.2, the court presumably would have expressly said so in the rule itself or the comment thereto.” *Id.* ¶ 42.

¶4 We grant this petition for review, but for the reasons stated, we deny relief.

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JOHN PELANDER, Chief Judge

CONCURRING:

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JOSEPH W. HOWARD, Presiding Judge

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PHILIP G. ESPINOSA, Judge