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
SEP 24 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. DENNIS BERT JORGENSON, Petitioner.	2 CA-CR 2009-0134-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-32179

Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines
Tucson
Attorneys for Respondent

Dennis Bert Jorgenson
Florence
In Propria Persona

E S P I N O S A, Presiding Judge.

¶1 Following a jury trial in 1991, petitioner Dennis Jorgenson was convicted of first-degree burglary, aggravated assault, kidnapping, sexual abuse, attempted sexual assault, armed robbery, and two counts of theft. The trial court sentenced Jorgenson to a combination of aggravated, consecutive and concurrent prison terms totaling seventy-six years. We affirmed Jorgenson's convictions and sentences on appeal. *State v. Jorgenson*, No. 2 CA-CR 91-0258 (memorandum decision filed June 23, 1992). In October 2007, more than sixteen years after he was convicted, Jorgenson filed a pro se "motion" for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. Counsel was appointed to represent him, and in July 2008, after the trial court had granted numerous extensions, counsel filed a notice in lieu of petition for post-conviction relief, stating he had thoroughly reviewed the record and believed no grounds existed to file "a good faith Rule 32 claim." In his *Anders*[1]-type pleading, counsel asked the trial court to permit Jorgenson to file a pro se supplemental petition.

¶2 At the outset, we question the propriety of permitting Jorgenson to file a supplemental petition. We note that in 2000, the Arizona Supreme Court amended Rule 32.4(c) in accordance with *State v. Smith*, 184 Ariz. 456, 910 P.2d 1 (1996), and *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614, *supp. op.*, 182 Ariz. 118, 893 P.2d 1281 (1995), to clarify that an *Anders*-type proceeding applies strictly to Rule 32 of-right proceedings as defined in Rule 32.1. 198 Ariz. CXV (2000). Nonetheless, counsel asked that Jorgenson, who is not an of-right defendant, be given the opportunity to file a pro se petition, a request

[1]*Anders v. California*, 386 U.S. 738 (1967).

the trial court granted. In December 2008, Jorgenson filed a pro se petition in which he challenged his sentences and raised claims of ineffective assistance of trial and appellate counsel. This petition for review followed the trial court's summary dismissal of that petition. "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 Jorgenson raises only one issue on review, whether he was entitled to have a jury, rather than the trial court, determine beyond a reasonable doubt the aggravating factors used at sentencing. The court denied relief in a detailed and thorough minute entry order that clearly identified Jorgenson's argument on this claim and correctly ruled on it in a manner that will allow any future court to understand its resolution. In its ruling, the court explained that *Blakely v. Washington*, 542 U.S. 296 (2004), does not apply retroactively to defendants like Jorgenson, whose convictions became final before that decision was issued. *See State v. Sepulveda*, 201 Ariz. 158, ¶ 8, 32 P.3d 1085, 1087-88 (App. 2001). We therefore adopt that portion of the court's ruling that addresses this issue. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We note, moreover, that despite Jorgenson's protestations on review and in his reply to the state's response to the petition filed below that he did not, in fact, intend to rely on *Blakely* or *Apprendi v. New Jersey*, 530 U.S. 466 (2000), his pro se petition and the arguments asserted therein suggest that he did, as the court correctly noted in its ruling below.

¶4 Because we conclude the trial court did not abuse its discretion by dismissing Jorgenson's petition for post-conviction relief, we grant the petition for review but deny relief.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

PETER J. ECKERSTROM, Judge