

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



DIVISION ONE  
FILED: 10/17/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0599-PR  
)  
Respondent, ) DEPARTMENT C  
)  
v. ) **MEMORANDUM DECISION**  
)  
KENNETH CLYDE GRINDLEY, ) (Not for Publication -  
) Rule 111, Rules of the  
Petitioner. ) Arizona Supreme Court)  
)  
)  
)

Petition for Review from the Superior Court of Maricopa County

Cause No. CR1995-000235

The Honorable Sherry K. Stephens, Judge

**REVIEW GRANTED; RELIEF DENIED**

Kenneth Clyde Grindley  
Pro Se

Buckeye

**PER CURIAM**

¶1 In Maricopa County cause number CR 1995-000235-A, petitioner Kenneth Clyde Grindley pled guilty to armed robbery and the trial court sentenced him to 10.5 years in prison. In

Maricopa County cause number CR 1994-009172-B, a jury convicted Grindley of aggravated assault and the trial court sentenced him to twenty-eight years in prison, with the sentences in the two cases to run consecutively. This court affirmed his conviction and sentence in the 1994 case on direct appeal. Grindley now seeks review of the dismissal of his latest successive notice of post-conviction relief in the two cases. We review the summary dismissal of a notice of post-conviction relief for abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). For the reasons that follow, we grant review but deny relief. We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9(c).

¶12 Grindley presents two issues for review. Grindley argues his sentences should run concurrently pursuant to the plea agreement in the 1994 case rather than consecutively. He further argues that the recent United States Supreme Court case of *Martinez v. Ryan*, \_\_ U.S. \_\_, 132 S.Ct. 1309 (2012), constitutes a significant change in the law that allows him to raise an untimely claim of ineffective assistance of counsel based on counsel's failure to raise the sentencing issue in the first post-conviction relief proceeding.

#### **Concurrent vs. Consecutive Sentences**

¶13 Grindley raised this same issue in 2011 in a prior post-conviction relief proceeding that addressed both cases.

Any claim a defendant raised in an earlier post-conviction relief proceeding is precluded and none of the exceptions under Rule 32.2(b) apply. Ariz. R. Crim. P. 32.2(a).

**Martinez v. Ryan**

¶14 *Martinez* held, "Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective." *Martinez*, \_\_ U.S. at \_\_, 132 S.Ct. at 1320. This simply means Grindley may be able to seek habeas corpus relief in federal court based on ineffective assistance of counsel. *Martinez* does not require a state court to consider all untimely claims of ineffective assistance of counsel raised in post-conviction relief proceedings.

¶15 For the above stated reasons, we grant review and deny relief.

/S/

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RANDALL M. HOWE, Presiding Judge

/S/

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SAMUEL A. THUMMA, Judge

/S/

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PATRICIA A. OROZCO, Judge