

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

ERIC DAVID BOUDETTE, *Petitioner*.

No. 1 CA-CR 15-0672 PRPC
FILED 10-26-2017

Petition for Review from the Superior Court in Yavapai County
No. V1300CR9980196
The Honorable Michael R. Bluff, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Yavapai County Attorney's Office, Prescott
By Bill R. Hughes
Counsel for Respondent

Eric David Boudette, Buckeye
Petitioner

MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the court in
which Presiding Judge Peter B. Swann and Judge Maria Elena Cruz joined.

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T H U M M A, Chief Judge:

¶1 Petitioner Eric David Boudette seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).¹ Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Because Boudette has shown no such error, this court grants review but denies relief.

¶2 In September 2000, a jury found Boudette guilty of attempted first degree murder, a Class 2 dangerous felony; aggravated assault, a Class 2 dangerous felony, and criminal damage in the amount of \$2,000 to \$9,999, a Class 5 non-dangerous felony, each committed in July 1998. The superior court sentenced Boudette to concurrent prison terms for all three convictions, the longest of which was 17 years for attempted first degree murder, and awarded him appropriate presentence incarceration credit. This court affirmed the convictions and sentences on direct appeal. *State v. Boudette*, CA-CR 00-0881 (Ariz. App. Apr. 4, 2002) (mem. dec).

¶3 In April 2003, approximately six months after the mandate issued on his direct appeal, Boudette filed various motions with the superior court, which were considered together as a petition for post-conviction relief. Although finding the April 2003 petition was untimely and noncompliant, the superior court gave Boudette 30 days to file a compliant petition. Boudette filed a petition for post-conviction relief alleging significant changes in law with regard to how jury instructions define premeditation and third-party culpability. The superior court dismissed Boudette's petition, finding the claims raised had been raised in the direct appeal and his petition for review filed with the Arizona Supreme Court, meaning they were procedurally barred. Boudette did not seek review of that dismissal.

¶4 In October 2011, Boudette filed a Petition for Writ of Habeas Corpus, claiming his sentence violated the United States and Arizona Constitutions, that he was being held "almost three years beyond the maximum lawful sentence," and that he was "denied due process and a fair trial regarding factors used to enhance his sentence." Noting the petition was not properly verified, the superior court dismissed the petition as an

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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untimely or successive post-conviction relief petition. Boudette did not seek review of that decision.

¶5 In December 2011, Boudette filed a Petition for Writ of Habeas Corpus (Conformed and Amended) and Affidavit, acknowledging he was not eligible for post-conviction relief but again challenging the legality of his sentence. The superior court dismissed the petition. Boudette appealed and, treating the appeal as a petition for review, this court denied review. *State v. Boudette*, CA-CR 12-0041 PRPC (Apr. 3, 2014) (Order)

¶6 In February 2015, in addressing a letter Boudette sent to the court, the superior court denied his request for clarification of time served.

¶7 In August 2015, Boudette filed a notice of post-conviction relief that provides the basis for his petition for review with this court, raising issues of ineffective assistance of counsel, actual innocence, newly discovered evidence, miscalculation of presentence incarceration credit and new laws which would affect his sentence. The superior court dismissed Boudette's notice, finding that it was untimely and that Boudette's claims were either previously raised and therefore precluded, or that the requested relief was unavailable by way of a post-conviction relief proceeding. The superior court denied Boudette's subsequent motion for reconsideration. Boudette's timely petition for review by this court followed.

¶8 Boudette argues the superior court abused its discretion and authority by dismissing his petition. Boudette also claims that "Arizona's Habeas Corpus substitution scheme known as Post-Conviction Relief Motion - Rule 32 ... is not inadequate as a substitution," and that the Eighth Amendment to the United States Constitution prohibits cruel and unusual punishment. Boudette further argues that perjured testimony was offered at trial and that he is factually, legally or actually innocent, as shown by new evidence and third-party culpability.

¶9 Boudette's Eighth Amendment argument fails because it is precluded. Any claim a defendant raised or could have raised on direct appeal or in an earlier post-conviction relief proceeding is precluded. Ariz. R. Crim. P. 32.2(a). Boudette pressed a direct appeal and numerous subsequent motions and petitions for post-conviction relief raising the same issues of insufficiency of evidence and newly discovered evidence. None of the exceptions under Rule 32.2(b) apply. A successive petition for post-conviction relief fails under Rule 32.2(b) unless an exception applies. Here, given his prior appeal and filings, Boudette has failed to raise a colorable claim which is not precluded.

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For these reasons, this court grants review but denies relief.



AMY M. WOOD • Clerk of the Court
FILED: AA