

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

MICHAEL STEPHEN WALKER, *Petitioner*.

No. 1 CA-CR 15-0692 PRPC  
FILED 8-10-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2011-165590-001  
The Honorable Steven P. Lynch, Judge *Pro Tempore*

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Diane Meloche  
*Counsel for Respondent*

Michael Stephen Walker, Florence  
*Petitioner*

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**MEMORANDUM DECISION**

Acting Presiding Judge Peter B. Swann delivered the decision of the court,  
in which Judge Maria Elena Cruz and Judge Kent E. Cattani joined.

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S W A N N, Judge:

¶1 Michael Stephen Walker seeks review of the superior court's dismissal of his successive petition for post-conviction relief under Ariz. R. Crim. P ("Rule") 32.9(c).<sup>1</sup> "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, 393, ¶ 4 (App. 2007). For reasons that follow, we grant review but deny relief.

¶2 Walker was indicted on one count of aggravated assault, a class 4 felony. Walker pleaded guilty to the charge with one prior felony conviction, and stipulated to a sentence of five years' imprisonment.<sup>2</sup> The court subsequently sentenced Walker to the slightly aggravated sentence of five years. The court sentenced Walker in accordance with the plea agreement.

¶3 Walker filed an "of right" notice for post-conviction relief and the court-appointed attorneys both informed the court that, after reviewing the record, investigating the case, and a discussion with Walker, neither could find any colorable claims for which relief could be granted. *See* Rule 32.4(c)(2). Walker's petition for post-conviction relief argued ineffective assistance of counsel and violation of his right to a preliminary hearing. The superior court dismissed the petition pursuant to Rule 32.6(c) and found that no colorable claim was raised; that Walker entered the plea agreement intelligently, knowingly, and voluntarily; and that Walker failed to meet his burden of showing ineffective assistance of counsel under either of the two *Strickland* prongs. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Walker did not seek review. But a year later, he filed his second petition for post-conviction relief. Walker again argues ineffective assistance of counsel and lack of a preliminary hearing, and (for the first time) alleges illegal sentencing based on a non-allegeable prior felony conviction, and challenges the facts supporting the original conviction. The superior court dismissed the second petition, and this timely petition for review followed.

¶4 We have considered the petition for review and find no abuse of discretion. Pursuant to Rule 32.2(a), Walker is precluded from relief

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<sup>1</sup> Walker filed a "Notice and an Application of a Writ of Error Coram Nobis" which the superior court construed as a notice of post-conviction relief pursuant to Rule 32.1.

<sup>2</sup> The prior felony conviction alleged by the state was a kidnapping conviction which was committed on December 29, 1991, and of which Walker was convicted on July 10, 1992.

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because the claims raised in his successive petition for post-conviction relief either were, or should have been, raised in his first Rule 32 proceeding. None of the exceptions in Rule 32.2(b) apply. *See State v. Petty*, 225 Ariz. 369, 373, ¶ 11 (App. 2010) (holding that a claim for ineffectiveness of counsel implicates the Sixth Amendment and is therefore encompassed within Rule 32.1(a)).

¶5 Accordingly, we grant review but deny relief.



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