

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ARTHUR L. VITASEK, *Petitioner*.

No. 1 CA-CR 19-0419 PRPC
FILED 2-27-2020

Appeal from the Superior Court in Maricopa County
No. CR2005-030514-001
The Honorable John R. Hannah, Jr., Judge

REVIEW GRANTED AND RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Andrea L. Kever
Counsel for Respondent

Arthur L. Vitasek, Florence
Petitioner

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which
Presiding Judge Samuel A. Thumma and Judge Diane M. Johnsen joined.

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HOWE, Judge:

¶1 Arthur L. Vitasek seeks review of the trial court's order denying his petition for post-conviction relief ("PCR"), filed pursuant to Arizona Rule of Criminal Procedure ("Rule") 32.1. This is Vitasek's first petition.

¶2 In November 2011, Vitasek was convicted of 19 counts of sexual conduct with a minor, 3 counts of public indecency to a minor, 3 counts of molestation of a child, 1 count of attempted molestation of a child, and 1 count of continuous sexual abuse of a child. The trial court sentenced Vitasek to several aggravated terms of imprisonment, followed by 11 consecutive life sentences. This Court affirmed his convictions and sentences but modified his presentence incarceration credit to reflect 1,651 days. *State v. Vitasek*, No. 1 CA-CR 12-0050, 2017 WL 525963, at *11 ¶ 64 (Ariz. App. Feb. 9, 2017).

¶3 In January 2016, Vitasek filed a PCR notice and was appointed PCR counsel. PCR counsel petitioned for PCR on behalf of Vitasek in October 2017. Vitasek then moved to proceed pro se. The trial court granted Vitasek's motion and ordered PCR counsel to serve as advisory counsel. Vitasek also petitioned for writ of habeas corpus in July 2018, moved to amend his PCR petition in September 2018, moved to supplement his PCR petition in October 2018, and petitioned for writ of habeas corpus again in October 2018, raising many different claims. In April 2019, after considering all Vitasek's filings, the trial court dismissed Vitasek's petitions. Vitasek timely petitioned this Court for review of six claims.

¶4 Absent an abuse of discretion or error of law, this court will not disturb a trial court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Vitasek bears the burden to show that the trial court abused its discretion by denying the petition for post-conviction relief. *See State v. Poblete*, 227 Ariz. 537, 538 ¶ 1 (App. 2011) (petitioner has burden of establishing abuse of discretion on review).

¶5 Vitasek has not met his burden. His claim about the admissibility of the victim's pretrial recorded interviews is precluded because it was adjudicated on the merits on direct appeal. *See* Ariz. R. Crim. P. 32.2(a)(2); *see also Vitasek*, 2017 WL 525963, at *8-9 ¶¶ 45-49. To the extent that he challenges this Court's ruling on direct appeal, his challenges are untimely. *See* Ariz. R. Crim. P. 31.20 (requiring a motion for reconsideration to be filed 15 days after entry of the decision). We also do not consider his argument that trial counsel was rendered ineffective when the trial court

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changed its ruling on the pretrial recordings because his petition for review does not develop his argument and skips from page 18 to 21. *See* Ariz. R. Crim. P. 32.16 (c)(2)(D); *see also State v. Sanchez*, 200 Ariz. 163, 166 ¶ 8 (App. 2001) (failure to develop argument waives it on review).

¶6 Additionally, his argument that the trial court abused its discretion by not conducting a mandatory “chastity” hearing under A.R.S. § 13-1421(B) is precluded because it was waived on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3); *see also Stewart v. Smith*, 202 Ariz. 446, 449 ¶ 9 (2002) (noting that post-conviction under Rule 32.1(a) is waived if the defendant did not raise the error on appeal).

¶7 Vitasek further argues that trial counsel was ineffective because he did not show the jury evidence of the victims’ “unchastity” as promised in trial counsel’s opening statement. Vitasek argues that trial counsel was unable to keep his promise because he failed to get the evidence admitted at a mandatory “chastity” hearing. His ineffective assistance of counsel claim fails because he does not argue that trial counsel’s performance fell below reasonable standards or caused him prejudice. *See State v. Roseberry*, 237 Ariz. 507, 509 ¶ 10 (2015) (requiring a showing that counsel’s performance fell below reasonable standards and that the deficient performance resulted in prejudice).

¶8 He argues next that direct appeal counsel was ineffective for filing an *Anders* brief and again challenges this Court’s ruling in his direct appeal. His ineffective assistance of counsel claim fails because he did not argue how he was prejudiced by counsel’s ineffectiveness. *See Roseberry*, 237 Ariz. at 509 ¶ 10. Additionally, he raised the issues himself in multiple supplemental briefs and presented no evidence that the outcome would have been different had counsel raised the issues. We also do not consider his challenges to this Court’s ruling on direct appeal because his arguments are untimely. *See* Ariz. R. Crim. P. 31.20.

¶9 Vitasek argues last that the trial court abused its discretion by denying his request for an in-camera inspection of Department of Public Safety records previously ordered by the trial court but not turned over by the Attorney General’s Office. The Arizona Rules of Criminal Procedure do not require the trial court to hold an in-camera inspection and we find that the trial court did not abuse its discretion by denying Vitasek’s motion for an in-camera inspection. To the extent that he argues that the State engaged in prosecutorial misconduct by not disclosing the Department records at trial, those claims are waived because he could have raised them on direct

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appeal with his other claims of prosecutorial misconduct. *See* Ariz. R. Crim. P. 32.2(a)(3); *see also Stewart*, 202 Ariz. at 449 ¶ 9.

¶10 We have reviewed the record in this matter, the trial court's order denying the petition for PCR, and the petition for review. We find that Vitasek has not established an abuse of discretion.

¶11 For the foregoing reasons, we grant review and deny relief.



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