

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

OCT 12 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

| | | |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, |) | 2 CA-CR 2012-0365-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| PAMELA MARIE WOOD, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2004125536001DT

Honorable Lisa Daniel Flores, Judge

REVIEW GRANTED; RELIEF DENIED

Pamela Wood

Good Year
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Pamela Wood seeks review of the trial court's order summarily dismissing her successive, untimely notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Wood has not met her burden of establishing such abuse here.

¶2 Wood pleaded guilty in 2005 to two counts of child abuse and one count of kidnapping, and the trial court sentenced her to a fifteen-year prison term for kidnapping to be followed by concurrent, ninety-nine year probation terms for child abuse. In February 2011, she filed a notice of post-conviction relief citing Rule 32.1(h), but providing no other information. The court summarily dismissed that notice. The court also summarily dismissed her subsequent notice, in which she claimed pursuant to Rule 32.1(h) that she was innocent of kidnapping because she was the victim’s custodial parent, citing the kidnapping statute, A.R.S. § 13-1304, and the definition of “restrain” in A.R.S. § 13-1301(2). In September 2011, she filed yet another notice of post-conviction relief, again claiming actual innocence on the same basis and providing an affidavit stating she was the victim’s custodial parent. The court dismissed that notice, noting Wood had failed to support her claims with “sufficient facts, evidence, or law” and finding the claim precluded because the court previously had rejected the same argument. This petition for review followed.

¶3 In her petition, Wood reiterates her claim that, because she was the victim’s custodial parent, she could not be convicted of kidnapping. We find no error in the trial court’s summary dismissal. A claim of actual innocence pursuant to Rule 32.1(h) is not necessarily subject to preclusion pursuant to Rule 32.2(a). Ariz. R. Crim. P. 32.2(b). But, to avoid preclusion, the defendant’s notice must “set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner.” *Id.* If a defendant fails to do so, “the notice shall be summarily dismissed.” *Id.* Here, although Wood refers to Rule 32.2(h) in her notice, she does not

substantiate her actual innocence claim as required by Rule 32.2(b) by explaining how her status as the custodial parent was relevant. That status does not relieve her of criminal liability as a matter of law refers to 32.2(h) in her notice, she does not substantiate her actual innocence claim as required by Rule 32.2(b); nor could she.¹ *See State v. Viramontes*, 163 Ariz. 334, 338, 788 P.2d 67, 71 (1990) (“Custodial parents cannot ‘consent’ to the restraint of their minor children for felonious purposes [and] do not have legal authority to subject their children to felonious acts.”). And, in any event, she did not offer any reason for her failure to raise that claim in a timely fashion. *Id.*

¶4 For the reasons stated, review is granted but relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

¹A guilty plea generally precludes a claim of innocence. *See State v. Norgard*, 92 Ariz. 313, 315, 376 P.2d 776, 778 (1962) (characterizing as “frivolous” motion to withdraw from plea when “the only basis given . . . was that the defendant apparently changed his mind and claimed to be innocent”). But a defendant may claim pursuant to Rule 32 that the factual basis for a guilty plea was insufficient as a matter of law. *See, e.g., State v. Johnson*, 181 Ariz. 346, 348-351, 890 P.2d 641, 643-646 (App. 1995). Recognizing that the factual basis for a plea need only provide strong evidence of guilt and not proof beyond a reasonable doubt, *see State v. Salinas*, 181 Ariz. 104, 106, 887 P.2d 985, 987 (1994), we assume without deciding that such a claim may be raised pursuant to Rule 32.1(h).