

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

FEB 20 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0437-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
IGNACIO ESTEBAN RIMER,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20073959

Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Ignacio Esteban Rimer

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Following a jury trial, petitioner Ignacio Rimer was convicted of illegally conducting an enterprise, kidnapping, sexual assault, and aggravated assault. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling 23.75 years. We affirmed Rimer's convictions and sentences on appeal. *State v. Rimer*, No. 2 CA-CR 2009-0100 (memorandum decision filed Jan. 7, 2011). Rimer

subsequently filed his first petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., alleging, inter alia, that trial, appellate, and Rule 32 counsel had been ineffective. We denied relief on Rimer's petition for review from the trial court's summary dismissal of that petition. *State v. Rimer*, No. 2 CA-CR 2011-0379-PR (memorandum decision filed Mar. 12, 2012).

¶2 In September 2012, Rimer filed a successive notice of post-conviction relief. In a ruling dated September 19, 2012, the trial court dismissed his notice based on preclusion, noting as to the claims asserted that Rimer had raised claims of ineffective assistance of appellate counsel in his first Rule 32 petition, and also finding precluded “[h]is claims of bias on the part of the trial judge and of erroneous evidentiary rulings made at trial,” presumably on the ground that he could have raised those claims on appeal. *See* Ariz. R. Crim. P. 32.2(a) (defendant precluded from Rule 32 relief based on any ground either “[r]aisable on direct appeal[,] . . . [f]inally adjudicated on the merits on appeal or in any previous collateral proceeding,” or “[t]hat has been waived at trial, on appeal, or in any previous collateral proceeding”). Despite the court's dismissal of his notice, Rimer filed a petition for post-conviction relief the following month, essentially asserting the same claims he had presented in his notice of post-conviction relief. The following day, the court entered a written ruling finding that “[b]ecause the Court dismissed Petitioner's notice [of post-conviction relief], he was not entitled to file a

subsequent petition.”¹ And, although not obligated to do so, the court further concluded “[i]n any event, Petitioner’s claims are precluded under Ariz. R. Crim. P. 32.2(a).”

¶3 Rimer then filed this petition for review, reurging the claims he raised in his petition below—that appellate counsel was ineffective and the trial court was biased against him. “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, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here. As the trial court correctly concluded, Rimer’s claims are precluded pursuant to Rule 32.2(a). Because Rimer raised claims of ineffective assistance of appellate counsel in his first Rule 32 proceeding,² as he was required to do, and because he could have raised his other claims on appeal, the court correctly dismissed his notice and petition based on preclusion. *See* Ariz. R. Crim. P. 32.6(c) (“court shall . . . dismiss[]” petition containing only precluded claims). Moreover, although Rimer checked the box on the notice of post-conviction relief form indicating his claim was based on newly discovered evidence, an exception to preclusion under Rule 32.2(b), he did not present his claims as such, nor has he provided any reason why his claims should not be otherwise precluded.

¹Although the order is both dated and date stamped October 5, 2012, the signature line at the bottom of the order is dated September 19, 2012. Because the ruling appears to have been issued after Rimer filed his petition for post-conviction relief on October 4, 2012, we infer the order was in fact entered on October 5, 2012.

²Generally, a defendant must raise claims of ineffective assistance of counsel, if at all, in his or her initial Rule 32 proceeding. *See State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, *in a Rule 32 post-conviction relief proceeding*, subsequent claims of ineffective assistance will be deemed waived and precluded.”) (emphasis in original).

¶4

Accordingly, although we grant the petition for review, we deny relief.

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

CONCURRING:

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

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