

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 13 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0465-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CARLOS GODOY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR16698

Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

M. Lando Voyles, Pinal County Attorney
By Ronald S. Harris

Florence
Attorneys for Respondent

Carlos Godoy

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 After a jury trial, Carlos Godoy was convicted of first-degree murder, three counts of kidnapping, and two counts of aggravated assault. The trial court sentenced him to life imprisonment without the possibility of parole for twenty-five years for the

murder conviction and concurrent terms of twelve years on the remaining counts, to be served consecutively to the life sentence. This court affirmed his convictions and sentences on appeal. *State v. Godoy*, No. 2 CA-CR 92-0967 (memorandum decision filed Nov. 7, 1995). Godoy twice petitioned for post-conviction relief, raising claims of ineffective assistance of trial counsel, and the trial court summarily dismissed the petitions. No petitions for review were filed. Godoy then filed a “Petition for Writ of Habeas Corpus,” which the trial court treated as a petition for post-conviction relief, again contending trial counsel had been ineffective and contending for the first time that appellate counsel also had been ineffective. The trial court again summarily dismissed the petition, and this court denied relief on review. *State v. Godoy*, No. 2 CA-CR 97-0437-PR (memorandum decision filed June 9, 1998).

¶2 In August 2012, Godoy filed another “Petition for Writ of Habeas Corpus,” claiming the prosecutor had been “vindictive” and committed “knowing misconduct,” Godoy was “denied [his] . . . right to be present at ‘material stages’ of the procedural process” by his lawyer’s waiving his presence at an in-chambers conference, and his counsel was ineffective. The trial court properly treated this petition as a Rule 32 petition and summarily dismissed it, concluding Godoy’s claims were precluded and “lack[ed] sufficient basis in law and fact to warrant further proceedings.”

¶3 On review, Godoy repeats his claims and argues the trial court erred in dismissing his petition. “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). Godoy has not sustained his burden of establishing such abuse here. As the court correctly concluded, all of Godoy's claims were or could have been raised on appeal or in his previous Rule 32 petitions, and he has not established that any of the claims fall within the exceptions to preclusion. *See* Ariz. R. Crim. P. 32.2. Therefore, although we grant the petition for review, relief is denied.

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

CONCURRING:

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge