

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

APR -9 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0508-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DANIEL WADE LANDRITH,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR041326

Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Daniel Wade Landrith

San Luis
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Petitioner Daniel Landrith seeks review of the trial court’s order denying his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “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). Landrith has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Landrith, who was sixteen years old at the time of his offense, was convicted of first-degree murder and kidnapping. The trial court imposed a sentence of life imprisonment on the murder charge and a consecutive, aggravated twenty-one-year sentence on the kidnapping charge. This court affirmed his convictions and sentences on appeal. *State v. Landrith*, No. 2 CA-CR 94-0072, 7 (memorandum decision filed Aug. 3, 1995). Landrith also was denied post-conviction relief in two different proceedings; this court affirmed the first denial, *State v. Landrith*, No. 2 CA-CR 96-0708-PR, 5 (memorandum decision filed Nov. 12, 1997), and lacked jurisdiction to review the second. *State v. Landrith*, No. 2 CA-CR 00-0152-PR, 2 (memorandum decision filed Aug. 22, 2000).

¶3 In August 2012, Landrith initiated a third proceeding for post-conviction relief, arguing in his petition that the United States Supreme Court’s decision in *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), was a significant change in the law entitling him to relief. The trial court concluded *Miller* did not apply because Landrith’s sentence for murder included the possibility of parole after twenty-five years, and the court summarily dismissed the petition.

¶4 On review, Landrith essentially repeats the arguments made below, and he asks this court, as best we understand his request, to order concurrent sentences and require his release from prison.¹ But we agree with the trial court that, even assuming the rule set forth in *Miller* constitutes a significant change in the law, it does not entitle Landrith to relief. As the court pointed out, in *Miller* the Supreme Court held only “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders.” *Id.* at ___, 132 S. Ct. at 2469. Landrith is eligible for parole from his murder sentence after twenty-five years’ imprisonment.² We therefore cannot say the court abused its discretion in summarily dismissing Landrith’s petition, and, although we grant the petition for review, we deny relief.

/s/ *Peter J. Eckerstrom*

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ *Joseph W. Howard*

JOSEPH W. HOWARD, Chief Judge

/s/ *Michael Miller*

MICHAEL MILLER, Judge

¹Landrith specifically asks that “this court hold a hearing to determine or resentence.”

²To the extent he argues otherwise in his petition, we note that, having committed his offense in 1993, the possibility of parole exists under A.R.S. § 41-1604.09. And, to the extent he makes an argument regarding consecutive sentences, “as a general rule, this court ‘will not consider the imposition of consecutive sentences in a proportionality inquiry.’” *State v. Berger*, 212 Ariz. 473, ¶ 27, 134 P.3d 378, 384 (2006), quoting *State v. Davis*, 206 Ariz. 377, ¶ 47, 79 P.3d 64, 74 (2003).