

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 18 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0007-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CHARLES WAYNE MARIETTA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20040962

Honorable Catherine Woods, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Charles W. Marietta

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Charles Marietta seeks review of the trial court's summary denial of his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. After a jury trial, Marietta was convicted of sexual conduct with a minor and

attempted sexual conduct with a minor and sentenced to a presumptive prison term of twenty years on the sexual conduct conviction, to be followed by lifetime probation on the attempted sexual conduct conviction. We affirmed his convictions and sentences on appeal. *State v. Marietta*, No. 2 CA-CR 2005-0398 (memorandum decision filed Mar. 29, 2007). The trial court denied Marietta's first petition for post-conviction relief, and we similarly denied relief on review. *State v. Marietta*, No. 2 CA-CR 2008-0410-PR (memorandum decision filed June 23, 2009). The Arizona Supreme Court denied review of our decision.

¶2 Marietta filed another notice of post-conviction relief and, to the petition that followed, attached an affidavit in which one of the jurors attested, “[S]ome of the male jurors on the panel stated that they had been molested as children.” The trial court denied relief, finding Marietta's claim of juror misconduct already had been raised and rejected in his first Rule 32 proceeding. On review, Marietta contends the affidavit presents “newly discovered evidence” entitling him to relief. *See* Ariz. R. Crim. P. 32.1(e); *see also* Ariz. R. Crim. P. 32.2(b) (claim based on Rule 32.1(e) not subject to preclusion in successive petition).

¶3 We find no abuse of discretion in the trial court's summary denial of relief. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of post-conviction relief reviewed for abuse of discretion). The trial court clearly identified, addressed, and correctly resolved Marietta's claim, and no purpose would be served by repeating the court's analysis here; instead, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). In short, Marietta's claim is precluded

because it had been raised and decided on its merits in a previous Rule 32 proceeding and, as the court below correctly concluded, the averments in the affidavit merely restate those allegations and do not constitute newly discovered material facts under Rule 32.1(e). *See* Ariz. R. Crim. P. 32.2(a)(2); *Marietta*, No. 2 CA-CR 2008-0410-PR, ¶¶ 8-12.

¶4 For the reasons above, as well as those stated in the trial court's order and our previous decision, although we grant review, relief is denied.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge