

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

MAY 30 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0055-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
KEVIN SCOTT CHESLEY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR027608

Honorable James E. Marner, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Kevin S. Chesley

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Kevin Chesley seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he alleged the United States Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004), was a significant change in the law entitling him to relief. "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). Chesley has not sustained his burden of establishing such abuse here.

¶2 After a jury trial in 1989, Chesley was convicted of burglary, kidnapping, sexual assault, and three counts of attempted sexual assault. The trial court imposed a combination of consecutive and concurrent, aggravated prison terms totaling thirty-eight years. We affirmed his convictions and sentences on appeal, *State v. Chesley*, No. 2 CA-CR 90-0040 (memorandum decision filed Sept. 6, 1990), and denied relief on petitions for review of the trial court’s denial of relief on three of Chesley’s previous petitions for post-conviction relief, *State v. Chesley*, No. 2 CA-CR 2004-0097-PR (decision order filed Dec. 1, 2004); *State v. Chesley*, No. 2 CA-CR 2002-0223-PR (memorandum decision filed June 30, 2003); *State v. Chesley*, No. 2 CA-CR 97-0287-PR (memorandum decision filed Apr. 23, 1998).

¶3 In September 2012, Chesley initiated the current proceeding for post-conviction relief, arguing that *Blakely* was a significant change in the law entitling him to relief. Concluding that *Blakely* was not retroactive and did not apply to cases, like Chesley’s, that had become final before it was decided, the trial court summarily denied relief.

¶4 On review, Chesley again argues *Blakely* is a significant change in the law that is applicable retroactively and entitles him to relief. He also claims for the first time that his consecutive sentences violate the prohibition against “‘multiple punishment’ for the same acts” and that he is actually innocent of all criminal offenses. Because these two claims were not presented to the trial court, we do not address them. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P.

32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review).

¶5 Chesley’s *Blakely* claim is without merit. As the trial court correctly explained, *Blakely* is applicable only “to cases not yet final when the opinion was issued.” *State v. Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d 629, 635 (App. 2005). “A conviction is final when ‘a judgment of conviction has [been] rendered, the availability of appeal exhausted, and the time for a petition for certiorari elapsed or a petition for certiorari finally denied.’” *Id.* ¶ 9, quoting *State v. Towery*, 204 Ariz. 386, ¶ 8, 64 P.3d 828, 831-32 (2003). Thus, Chesley’s convictions became final when this court issued its mandate on October 29, 1990, well before the Supreme Court issued its decision in *Blakely* in 2004. *See id.* Therefore, *Blakely* does not entitle him to relief, and, 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