

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

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MAY -2 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0089-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
LORRAINE ANNA MARIA CHRISTINA)	the Supreme Court
STEDMAN,)	
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2006008836001DT

Honorable John R. Ditsworth, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Arthur Hazelton

Phoenix
Attorneys for Respondent

Sullivan Law Office PLLC
By Dianne Sullivan

Tempe
Attorney for Petitioner

V Á S Q U E Z, Presiding Judge.

¶1 Lorraine Stedman petitions this court for review of the trial court’s order summarily dismissing her of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Stedman has not met her burden of establishing such abuse here.

¶2 In 2009, Stedman pleaded guilty to an indictment charging her with one count of fraudulent scheme and artifice and eleven counts of theft. The trial court sentenced her to concurrent prison terms—a 9.25-year term imposed for her conviction of fraudulent scheme and artifice, and two four-year and nine 6.5-year terms for her theft convictions.

¶3 Stedman sought post-conviction relief, arguing the trial court erred in enhancing her prison term for fraudulent scheme and artifice pursuant to former A.R.S. 13-702.02.¹ She argued the offense was not a “second or subsequent” offense as defined by that statute because the indictment stated that offense “began on January 1, 2003,” before the theft offenses were alleged to have occurred. After oral argument, the court denied Stedman’s claim as “precluded.”

¶4 On review, Stedman summarily repeats her claim that the trial court improperly applied former § 13-702.02 to her sentence for fraudulent scheme and artifice.

¹The Arizona criminal sentencing code has been amended and renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective “from and after December 31, 2008,” *id.* § 120. We refer in this decision to the sentencing statute in force at the time of Stedman’s offenses. *See* 1999 Ariz. Sess. Laws, ch. 261, § 10.

She does not, however, address the court's conclusion that her claim is precluded. A petition for review shall include "[t]he issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review." Ariz. R. Crim. P. 32.9(c)(1)(ii). And "[f]ailure to raise any issue that could be raised in the petition . . . for review shall constitute waiver of appellate review of that issue." Ariz. R. Crim. P. 32.9(c)(1).

¶5 A claim of post-conviction relief may be precluded for several reasons, including "[t]hat [it] has been waived at trial." Ariz. R. Crim. P. 32.2(a)(3). The trial court's minute entry from Stedman's change-of-plea hearing states that she "admits to the aggravating factors regarding the [§] 13-702.02, multiple offenses on multiple dates," which at least arguably suggests she agreed her sentences were subject to enhancement based on that statute. Stedman has not provided this court with transcripts of that hearing or of her sentencing hearing. Nor has she provided a transcript of the oral argument on her petition for post-conviction relief. We presume the trial court knows and follows the law, *see State v. Williams*, 220 Ariz. 331, ¶ 9, 206 P.3d 780, 783 (App. 2008), and we presume the missing transcripts support the court's decision, *see State v. Mendoza*, 181 Ariz. 472, 474, 891 P.2d 939, 941 (App. 1995).² Accordingly, Stedman has failed to demonstrate the court erred in finding her claim precluded.

²Stedman raised this argument in a sentencing memorandum filed in the trial court. But, absent the relevant transcripts and in light of the presumption that the trial court knew and followed the law, the fact that Stedman previously had raised this argument does not demonstrate the court erred in finding it precluded.

¶6

Although review is granted, relief is denied.

/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