

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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AUG 26 2013  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0127-PR
	)	DEPARTMENT B
Respondent,	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
DANIEL ALFARO-MERCADO,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR035035

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Daniel Alfaro-Mercado

Florence  
In Propria Persona

K E L L Y, Presiding Judge.

¶1 Daniel Alfaro-Mercado petitions this court for review of the trial court's order dismissing his successive 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). Alfaro-Mercado has not sustained his burden of establishing such abuse here.

¶2 After being convicted of multiple counts of burglary, robbery, aggravated assault, and sexual assault, Alfaro-Mercado was sentenced to concurrent and consecutive prison terms totaling 41.5 years. We affirmed his convictions and sentences on appeal. *State v. Alfaro-Mercado*, No. 2 CA-CR 92-0832 (memorandum decision filed May 10, 1994). He sought post-conviction relief, but the trial court dismissed that proceeding after appointed counsel filed a notice stating he could find no issues to raise and Alfaro-Mercado failed to timely file a pro se petition.

¶3 In 2002, Alfaro-Mercado initiated a second Rule 32 proceeding, during which he requested voluminous additional records, including his juvenile court records, police reports, and witness interviews. The court refused that request, and Alfaro-Mercado filed a Rule 32 petition raising various issues. The court apparently never ruled on those issues, but nonetheless granted Alfaro-Mercado's request for an extension of time to file a petition for review in this court. Alfaro-Mercado did so, raising substantially the same issues as he had in his petition in the trial court.

¶4 We determined that, of the issues raised in that petition, the only matter properly before us was the trial court's denial of Alfaro-Mercado's request for additional documents. We reviewed the issue under our special action jurisdiction, but ultimately denied relief, noting that the post-conviction relief rules did not expressly require a court to provide a petitioner with any documentation other than trial transcripts and, even assuming the court had any obligation to grant a request for such documentation, it did not abuse its discretion in denying Alfaro-Mercado's request because he "did not identify

in detail which issues he planned to raise or why the documents he sought were specifically necessary to resolve those issues.” *State v. Alfaro-Mercado*, No. 2 CA-CR 2003-0411-PR (decision order filed Jan. 14, 2005).

¶5 In 2012, Alfaro-Mercado filed another notice of and petition for post-conviction relief. Alfaro-Mercado argued the trial court and state had improperly kept his juvenile records from him, and suggested those records were newly discovered evidence showing that his confession had been coerced and that his attorney had “abused him and lied to him,” apparently in an effort to force him to “agree[] to have his case transferred to the Adult Superior Court.” He further claimed the court and prosecutor had committed various ethical violations and were biased against him. Finally, he asserted that his sentences were excessive, that the court had erred in imposing enhanced, consecutive sentences, and that his “attorneys” were ineffective in failing to raise his sentencing claims and in “representing him in his Juvenile proceeding.”

¶6 The trial court summarily denied the petition, concluding that his claims of sentencing error, coerced confession, and ineffective assistance of counsel were precluded. The court also determined that, irrespective of what might be contained in Alfaro-Mercado’s juvenile records, he had failed to show any prejudice resulting from counsel’s purported attempt to coerce him to transfer the case to adult court. The court observed that, although the Rules of Juvenile Procedure would permit a juvenile to waive an evidentiary hearing, the trial court nonetheless would make the ultimate decision whether to transfer the case and that the “substantial weight of the evidence” supported

the decision to do so. Finally, the court rejected Alfaro-Mercado's claims of misconduct, stating he had not adequately supported them. The court denied Alfaro-Mercado's subsequent motion for rehearing, and this petition for review followed.

¶7 On review, Alfaro-Mercado summarily repeats his claims and again insists he is entitled to "discovery" of his juvenile court records. We find no error in the trial court's summary denial of his petition. His claims related to his conviction and sentence are precluded because they either were raised on appeal, could have been raised on appeal, or could have been raised in his first post-conviction proceeding had Alfaro-Mercado filed a pro se petition. Ariz. R. Crim. P. 32.2(a)(2), (3).

¶8 To the extent he argued below that his claims were based on newly discovered evidence—his juvenile court records—such claims are not necessarily subject to preclusion. Ariz. R. Crim. P. 32.1(e); 32.2(b). But Alfaro-Mercado did not comply in any meaningful way with Rule 32.2(b) in his notice or petition because he did not provide any reason for his failure to raise claims based on those records in his first Rule 32 proceeding. Thus, the trial court did not err in rejecting the claims based on his juvenile records.

¶9 In regards to Alfaro-Mercado's claim that he is entitled to discovery of his juvenile court records, a petitioner may be entitled to discovery in a Rule 32 proceeding upon a showing of good cause made in the petition for post-conviction relief. *See Cañion v. Cole*, 210 Ariz. 598, ¶¶ 9-11, 115 P.3d 1261, 1263-64 (2005). But Alfaro-Mercado has made no such showing here. He did not attempt to obtain his juvenile records until

approximately a decade after his convictions and he has waited nearly two decades to provide any detail in support of his attempt—despite having first-hand knowledge of the facts those records purportedly would show. And he has provided no explanation for these extensive delays. Finally, we agree with the trial court that Alfaro-Mercado failed to provide any factual support for his various allegations of misconduct against the court and state—even assuming that claim is cognizable under Rule 32.1. Thus, the court did not err in summarily rejecting it. *See* Ariz. R. Crim. P. 32.6(c) (summary disposition appropriate when no “claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings”).

¶10 For the reasons stated, although review is granted, relief is denied.

*/s/ Virginia C. Kelly*  
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VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

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

*/s/ Peter J. Eckerstrom*  
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PETER J. ECKERSTROM, Judge