

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 2013-0140-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ULYSSES H. GRANT III,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2006130480002DT

Honorable Raymond P. Lee, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant

Phoenix
Attorneys for Respondent

Ulysses H. Grant III

Florence
In Propria Persona

MILLER, Judge.

¶1 Ulysses Grant III petitions this court for 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. 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). We grant review but deny relief.

¶2 Grant was convicted after a jury trial of theft of a means of transportation and sentenced to an 11.25-year prison term. We affirmed his conviction and sentence on appeal. *State v. Grant*, No. 1 CA-CR 07-0707 (memorandum decision filed Sept. 2, 2008). Grant filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had “searched the record for any possible Rule 32 issues and could not find any viable issues or colorable claims.” Grant then filed a pro se petition for post-conviction relief, raising claims of prosecutorial misconduct and ineffective assistance of counsel. The trial court summarily dismissed that petition and denied Grant’s subsequent motion for rehearing. Grant sought review of that ruling, and this court denied review. *State v. Grant*, No. 1 CA-CR 10-0614 PRPC (order filed Jun. 1, 2012).

¶3 While that petition for review was pending, Grant filed a successive petition for post-conviction relief raising multiple claims, including several claims of error from his trial, ineffective assistance of appellate counsel, and prosecutorial misconduct. The trial court summarily dismissed that petition, finding Grant’s claims precluded. This petition for review followed the court’s subsequent denial of Grant’s motion for rehearing and “motion for writ of mandamus.”

¶4 On review, Grant repeats several of his claims but does not address the trial court’s conclusion that those claims are precluded. We find no error in the court’s determination—Grant’s claims could have been raised on appeal or in his first post-conviction proceeding, or were raised in those proceedings and rejected. Thus, they are precluded pursuant to Rule 32.2(a). Grant stated in his petition below that he had “proven actual innocence” pursuant to Rule 32.1(h), and again refers to Rule 32.1(h) in

his petition for review. Although a claim of actual innocence is not necessarily subject to preclusion, none of the arguments in his petition can reasonably be read to raise such a claim and, in any event, he did not provide “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner” as required by Rule 32.2(b). Accordingly, the trial court did not err in summarily rejecting it.

¶5 Grant also refers in passing to newly discovered evidence, but he did not raise this claim in his petition below, and we therefore do not address it further. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider issues not presented to trial court); *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). And, to the extent Grant asserts he is entitled to relief because he lacks access to legal resources, that claim is not cognizable under Rule 32 because it does not implicate his conviction or sentence but, rather, concerns only the alleged post-trial denial of his rights. *See* Ariz. R. Crim. P. 32.1.

¶6 We grant review but deny relief.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge