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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. JOHN BERNARD JOHNSON, Petitioner.	2 CA-CR 2013-0202-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR041327

Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

John B. Johnson
Buckeye
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner John Johnson seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "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). Johnson has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Johnson was convicted of first-degree murder and kidnapping. The trial court imposed a life sentence on the murder conviction, followed by an aggravated twenty-one-year term for kidnapping. This court affirmed Johnson's convictions and sentences on appeal. *State v. Johnson*, No. 2 CA-CR 94-0049 (memorandum decision filed Mar. 31, 1995). In 1996, he sought and was denied post-conviction relief, and this court denied relief on his petition for review.

¶3 In 2006, Johnson filed a second notice of post-conviction relief, and appointed counsel filed a notice stating "there do not appear to be non-precluded claims," and he therefore would not "be filing a successive Petition." The court dismissed the notice. In 2012, Johnson filed another notice of post-conviction relief, arguing in his petition that a significant change in the law entitled him to relief, that his sentence is illegal, and that he had received ineffective assistance of trial, appellate, and post-conviction relief counsel. Concluding Johnson had "raised no non-precluded colorable claim for relief," the trial court dismissed his petition.

¶4 On review, Johnson reasserts his claims made below and argues he has not received an "authentic" copy of the record in order to properly pursue his claims. The record, however, shows that Johnson was provided with "a copy of the Pima County Superior Court file" and transcripts by one of his Rule 32 attorneys. Johnson does not specify on review what records he did not obtain, nor how they would advance any non-precluded claim now raised. Furthermore, as the trial court correctly concluded, Johnson's claims of ineffective assistance of counsel and an illegal sentence are

precluded because they were or could have been raised in previous proceedings. *See* Ariz. R. Crim. P. 32.2(a)(2), (3).

¶5 In support of his claim that he is entitled to relief based on a significant change in the law, Johnson cites *State v. Schmidt*, 220 Ariz. 563, 208 P.3d 214 (2009), *State v. Zinsmeyer*, 222 Ariz. 612, 218 P.3d 1069 (App. 2009), and *State v. Perrin*, 222 Ariz. 375, 214 P.3d 1016 (App. 2009), in relation to his sentence and several federal court decisions in relation to his conviction. But he does not explain how these decisions apply to his case or how they "would probably overturn [his] conviction or sentence," nor does he establish that the decisions constitute a "significant change in the law" pursuant to Rule 32.1(g).[1] The trial court therefore properly concluded Johnson had failed to present a "non-precluded colorable claim." For these reasons, although we grant the petition for review, relief is denied.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller
MICHAEL MILLER, Judge

[1]To the extent we understand his argument, Johnson discussed the application of *Schmidt* and its progeny to his case in his reply to the state's response to his petition for review, still failing to address whether those cases constitute a significant change in the law. But, the trial court need not consider arguments made for the first time in a reply. *Cf. State v. Lopez*, 223 Ariz. 238, ¶ 7, 221 P.3d 1052, 1054 (App. 2009).