

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

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 2013-0227-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
DOUGLAS MAX BOLDT,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20010395

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Sheila Sullivan Polk, Yavapai County Attorney  
By Sheila Sullivan Polk

Prescott  
Attorneys for Respondent

Douglas M. Boldt

Florence  
In Propria Persona

ECKERSTROM, Judge.

¶1 Pursuant to a plea agreement, petitioner Douglas Boldt was convicted of first-degree felony murder in 2002 and given a natural life sentence. Boldt filed his first

petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in 2002, followed by five successive post-conviction pleadings.<sup>1</sup> In each instance, the trial court summarily dismissed Boldt's petition or notice, and on two occasions, this court either dismissed or denied Boldt's petitions for review. Boldt now seeks review from the court's dismissal of his most recent notice of post-conviction relief, filed in 2012. "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). We find no such abuse here.

¶2 In a ruling dated May 14, 2012, the trial court dismissed Boldt's notice based on preclusion. *See* Ariz. R. Crim. P. 32.2(a)(2), (3) (precluding claims based on any ground "[f]inally adjudicated on the merits . . . in any previous collateral proceeding" or "[t]hat has been waived . . . in any previous collateral proceeding."). On review, Boldt argues the court improperly dismissed his claim of actual innocence raised pursuant to Rule 32.1(h), and maintains he is entitled to an evidentiary hearing "to subpoena and compel[] witness testimony [to] present new evidence in this case to prove he is actually innocent."<sup>2</sup> He also asserts the preclusive effect of Rule 32.2(a) does not apply to him. *See* Ariz. R. Crim. P. 32.2(b) (preclusive effect of Rule 32.2(a) "shall not apply to claims for relief" based, *inter alia*, on Rule 32.1(h)).

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<sup>1</sup>The fourth pleading was entitled a petition for writ of habeas corpus, which the trial court deemed a petition for post-conviction relief.

<sup>2</sup>Although Boldt raised an additional claim in his notice below, because he has not raised it on review, we do not address it.

¶3 As the trial court correctly concluded, Boldt’s claims are precluded pursuant to Rule 32.2(a). Although Boldt stated in his notice that he was asserting a claim based on actual innocence, an exception to preclusion under Rule 32.2(b), nothing in the record establishes “meritorious reasons . . . substantiating the claim and indicating why the claim was not stated in the previous petition,” thereby excusing Boldt from the preclusive effect of Rule 32. Ariz. R. Crim. P. 32.2(b). Moreover, although Boldt did, in fact, raise a claim based on actual innocence in a prior Rule 32 proceeding, he has not suggested there is new evidence to support raising this claim again.

¶4 Additionally, to the extent Boldt’s claim that he would have been able to prove his innocence “if it had not been for trial counsel[’]s negligence” can be considered one of ineffective assistance of counsel, he raised such claims in prior Rule 32 proceedings and is precluded from doing so again. *See* Ariz. R. Crim. P. 32.2(a)(2), (3); *see also State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”) (emphasis omitted).

¶5 Nothing in Boldt’s petition suggests the trial court abused its discretion in denying his sixth post-conviction petition. Accordingly, although we grant Boldt’s petition for review, we deny relief.

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

CONCURRING:

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

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