

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

OCT -8 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0242-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ALFREDO ANGEL GODOY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20050821

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Alfredo Angel Godoy

Florence
In Propria Persona

H O W A R D, Chief Judge.

¶1 Alfredo Godoy seeks review of the trial court's summary dismissal of his successive notice of post-conviction relief. We will not disturb the court's ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Godoy has not met his burden of demonstrating such abuse here.

¶2 Godoy was convicted after a jury trial of burglary, five counts of kidnapping, two counts of endangerment, and four counts of aggravated assault with a

deadly weapon and sentenced to concurrent and consecutive prison terms totaling twenty-seven years. We affirmed his convictions and sentences on appeal. *State v. Godoy*, No. 2 CA-CR 2006-0103 (memorandum decision filed Jul. 29, 2008). The trial court summarily dismissed his first two post-conviction proceedings, and Godoy did not timely seek review of those rulings.

¶3 In April 2013, Godoy filed a “motion for correction of error” citing Rule 24.4, Ariz. R. Crim. P., claiming the jury was improperly permitted to consider five counts that had been dismissed pursuant to a motion for a judgment of acquittal, resulting in him having been found guilty and sentenced on those counts. He claimed this error violated the double jeopardy clause and caused verdicts that were inconsistent with the indictment as well as illegal sentences. The trial court denied the motion, noting that five counts had been dismissed and that the “remaining count numbers were then renumbered so that the count numbers would be sequential” and Godoy “was sentenced on those renumbered counts.” Godoy then filed a notice of post-conviction relief raising essentially the same argument and claiming he was being held beyond the expiration of his sentence.¹ *See* Ariz. R. Crim. P. 32.1(d). The court summarily dismissed Godoy’s notice for the same reasons it had denied his earlier motion.

¶4 On review, Godoy repeats his claim that he was improperly found guilty of and sentenced for counts that had been dismissed by the trial court. Even if this claim were not precluded by Rule 32.2(a)(2), Ariz. R. Crim. P.,² Godoy has not identified a

¹Godoy also referred to a claim of newly discovered material facts, but has not identified any such facts or developed any relevant argument below or on review.

²Godoy suggests his claim is not subject to preclusion because it falls within Rule 32.1(d), Ariz. R. Crim. P., which can be excepted from preclusion by Rule 32.2(b). But Rule 32.1(d) does not apply here. Godoy’s twenty-seven year combined sentence—even had it been imposed improperly—has not expired. Godoy attacks the propriety of his

dismissed charge for which the jury rendered a guilty verdict or for which he received a sentence. As the trial court correctly determined, Godoy’s confusion stems from the court’s decision to renumber the counts after five of the original seventeen counts were dismissed. To the extent Godoy argues the court was not permitted to renumber the counts, even if that claim had merit it was not raised below, and we do not address it further. *See State v. Ramirez*, 126 Ariz. 464, 467-68, 616 P.2d 924, 927-28 (App. 1980) (appellate court will not consider on review claims not raised below); Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”).

¶5 For the reasons stated, although we grant review, we deny relief.

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

CONCURRING:

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

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Administrative Order No. 2012-101 filed December 12, 2012.

sentence—a claim encompassed by Rule 32.1(c) and subject to preclusion by Rule 32.2(a).