

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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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0247-PR
)	DEPARTMENT B
Respondent,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 111, Rules of
)	the Supreme Court
JUSTIN KYLE SHEETS,)	
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20040524

Honorable Danelle Liwski, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Justin Kyle Sheets

Florence
In Propria Persona

ECKERSTROM, Judge.

¶1 Justin Sheets petitions for review of the trial court’s summary dismissal of his successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim.

P. We grant review, but deny relief.

¶2 Following a jury trial, Sheets was convicted in 2005 of kidnapping a minor under the age of fifteen, aggravated assault, and sexual assault of a minor under the age of fifteen. The trial court sentenced him to consecutive, presumptive prison terms totaling 19.5 years, to be followed by a consecutive term of life in prison without the possibility of release for thirty-five years. We affirmed Sheets's convictions and sentences on appeal. *State v. Sheets*, No. 2 CA-CR 2005-0200 (memorandum decision filed Feb. 27, 2006). He then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and although we granted review of the court's dismissal of that petition, we denied relief. *State v. Sheets*, No. 2 CA-CR 2007-0360-PR (memorandum decision filed Apr. 25, 2008).

¶3 In Sheets's second, successive petition for post-conviction relief, filed in propria persona, he alleged his life sentence was ambiguous and unconstitutional, and asked that it be vacated. The trial court summarily dismissed his petition, and this petition for review followed. In its ruling denying relief, the court found Sheets's claim precluded by his failure to raise it on appeal or in his first post-conviction proceeding.¹ We will not disturb a trial court's summary denial of post-conviction relief unless the court has abused its discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find no such abuse here.

¶4 On review, Sheets asserts the same argument he raised below, specifically claiming that in the absence of a parole board, there is no vehicle by which he can be

¹The trial court also found Sheets had failed to state a colorable claim entitling him to relief. Because the court correctly dismissed the claim as precluded, we do not address its conclusion that the claim was not colorable.

considered for release in thirty-five years, rendering his life sentence ambiguous and unconstitutional. He also contends the trial court erred by precluding his claim because he had not knowingly, voluntarily, and intelligently waived it. Because Sheets plainly had the opportunity to raise his claim either on appeal or in his first Rule 32 proceeding, we agree with the court's determination that Sheets's claim is precluded. *See* Ariz. R. Crim. P. 32.2(a)(2), (3) (claims in successive petition precluded if finally adjudicated on merits or waived in previous proceeding). And, although Sheets seems to suggest that certain claims are not subject to preclusion on the basis of waiver pursuant to Rule 32.2(a)(3), presumably referring to claims that involve constitutional rights that require a voluntary, knowing, and intelligent waiver by the defendant, he has not established that his claim falls within this narrow exception to the preclusive effect of Rule 32.2(a)(3).

¶5 Therefore, we grant the petition for review but 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