

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

SEP 16 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0275-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
WILLIAM KENNETH QUALLS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2003007036001DT

Honorable Sally S. Duncan, Judge
Honorable Douglas L. Rayes, Judge

REVIEW GRANTED; RELIEF DENIED

William Kenneth Qualls

Florence
In Propria Persona

K E L L Y, Presiding Judge.

¶1 Petitioner William Qualls seeks review of the trial court's order denying what it deemed a motion for rehearing or reconsideration of its ruling dismissing his post-conviction proceeding, filed pursuant to Rule 32, Ariz. R. Crim. P. We review a trial court's ruling in a post-conviction-relief proceeding for a clear abuse of discretion. *State*

v. Swoopes, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Qualls has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Qualls was convicted of kidnapping, attempted sexual conduct with a minor, two counts of molestation of a child, and six counts of sexual conduct with a minor. The trial court imposed presumptive, consecutive prison terms totaling ninety-six years. Qualls's convictions and sentences were affirmed on appeal. *State v. Qualls*, No. 1 CA-CR 03-0959, ¶¶ 1, 18 (memorandum decision filed Dec. 21, 2004). Qualls thereafter sought post-conviction relief three times in various forms, and in each case the trial court treated the proceeding as one for post-conviction relief and denied relief. This court denied petitions for review in two of those proceedings.

¶3 Qualls then filed a petition for a writ of habeas corpus, which the court correctly treated as a petition for post-conviction relief, *see* Ariz. R. Crim. P. 32.3, and dismissed in August 2010, concluding Qualls's claims could not be raised in an untimely, successive petition. In April 2012, Qualls filed a "notice of error and conflicting law," arguing the trial court had erred in dismissing the proceeding. The trial court treated the notice as a motion for rehearing or reconsideration and stated it would not consider it because it was untimely. *See* Ariz. R. Crim. P. 32.9(a).

¶4 In his petition for review, Qualls challenges the trial court's August 2010 ruling, asserting primarily that the court erred in treating his petition as one for post-conviction relief and in concluding his claim of lack of subject matter jurisdiction could not be raised in an untimely, successive petition. He does not address the court's ruling dismissing his latest filings as untimely motions for rehearing, nor does he explain how

the court abused its discretion in denying those motions. In the absence of any such argument, we cannot say the court abused its discretion in denying his motions for rehearing as untimely. *See* Ariz. R. Crim. P. 32.9(c) (“Failure to raise any issue that could be raised in the petition . . . for review shall constitute waiver of appellate review of that issue.”). And Qualls does not argue, let alone establish, that his petition for review from the untimely motions for rehearing allows us to review the trial court’s decision dismissing his petition for post-conviction relief, which was issued three years ago. *See* Ariz. R. Crim. P. 32.9.

¶5 Accordingly, although we grant the petition for review, we deny relief.

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

CONCURRING:

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

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