

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

WILLIAM E. MOREHEAD,
Petitioner.

No. 2 CA-CR 2015-0030-PR
Filed February 19, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR1992091437

The Honorable David B. Gass, Judge

REVIEW GRANTED; RELIEF DENIED

William E. Morehead, Florence
In Propria Persona

STATE v. MOREHEAD
Decision of the Court

MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

VÁSQUEZ, Judge:

¶1 William Morehead seeks review of the trial court’s order denying his successive and untimely petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Morehead has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Morehead was convicted of child molestation and sexual conduct with a minor and sentenced to consecutive prison terms totaling thirty-seven years. We affirmed his convictions and sentences on appeal. *State v. Morehead*, No. 1 CA-CR 94-0220 (memorandum decision filed Oct. 24, 1995). He has since sought and been denied post-conviction relief on at least four occasions prior to this proceeding.

¶3 In this proceeding, Morehead filed a document titled “Rule 32.1(h) Actual Innocence,” in which he claimed: (1) the state had suppressed victim medical records and “knowingly solicit[ed]” perjured testimony of prior acts; (2) he was denied an instruction on a lesser-included offense; (3) the court erred in admitting evidence of prior acts pursuant to Rule 404(b), Ariz. R. Evid., effectively shifting the state’s burden of proof; and (4) trial counsel had been ineffective by “withholding vital evidence” of his innocence. He also asserted that his claims were not subject to “preclusion, waiver, [or] procedural default” because his appointed counsel had failed to raise the issues on direct appeal or in his first post-conviction proceeding. The trial court summarily denied relief. This petition for review followed.

STATE v. MOREHEAD
Decision of the Court

¶4 On review, Morehead repeats his arguments, asserting he is entitled to raise these claims because he can show “cause” for their “procedural default” –namely, his former counsel’s failure to raise them. He cites *Martinez-Villareal v. Lewis*, 80 F.3d 1301 (9th Cir. 1996), in support of this argument. But that case had no application to Arizona post-conviction proceedings. Pursuant to Rule 32.4(a), Morehead may only raise claims pursuant to Rule 32.1(d) through (h) in this untimely proceeding. To the extent he raises a claim pursuant to Rule 32.1(h), we agree with the trial court that he has not established a colorable claim “that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt.”

¶5 Although he does not mention this argument in his petition for review, in his petition below, Morehead stated that newly discovered evidence supports his claims. But he did not identify any evidence qualifying as such. Although he claimed victim medical records were available, the documents attached to his own motion suggest no such records existed. Morehead also refers to an “F.B.I. Report,” but does not suggest how that report could be relevant to his case. Finally, although he claims a diary purportedly written by a victim is newly discovered evidence, the documents he provides shows he was made aware of it at his sentencing at the very latest. Thus, even assuming the diary exists and has any exculpatory value, he cannot demonstrate diligence in raising this issue as required by Rule 32.1(e). Morehead does not identify any other claims that may be raised in this untimely proceeding.

¶6 We grant review but deny relief.