

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

REYNALDO WILLIAM VIDAL
Petitioner.

No. 2 CA-CR 2015-0166-PR
Filed September 3, 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NOT FOR PUBLICATION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 Pima County
Nos. CR20131021002 and CR20131065001
The Honorable Scott Rash, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Reynaldo W. Vidal, Tucson
In Propria Persona

STATE v. VIDAL
Decision of the Court

MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly¹ concurred.

H O W A R D, Judge:

¶1 Petitioner Reynaldo Vidal seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "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). Vidal has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Vidal was convicted in two cause numbers of theft of a means of transportation and possession of methamphetamine. The trial court sentenced him to concurrent, partially aggravated six-year prison terms for each offense. Vidal thereafter sought and was denied post-conviction relief, and this court denied relief on his petition for review. *State v. Vidal*, No. 2 CA-CR 2014-0337-PR, ¶¶ 1, 7 (memorandum decision filed Jan. 9, 2015).

¶3 Shortly thereafter, Vidal filed a second notice of post-conviction relief. He filed a separate petition on each cause, arguing in the theft cause that the state had engaged in prosecutorial misconduct and that the court had wrongfully aggravated one of his sentences. As to the possession cause, he raised various claims of sentencing error. The trial court summarily denied relief, concluding the claims were precluded by Vidal's failure to raise them in his first proceeding. *See* Ariz. R. Crim. P. 32.2(a)(3).

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

STATE v. VIDAL
Decision of the Court

¶4 On review, Vidal apparently acknowledges the rules of preclusion, but contends the presence of “overwhelming facts including fundamental error” exempts his claims. To the extent Vidal thereby argues that claims of fundamental error are exempt from the rule of preclusion, he is mistaken. As this court stated in *Swoopes*, “Not all error that is fundamental involves the violation of a constitutional right that can be waived only if the defendant personally does so knowingly, voluntarily, and intelligently.” 216 Ariz. 390, ¶ 41, 166 P.3d at 958. And, we added, “if our supreme court had intended that fundamental error be an exception to preclusion under Rule 32.2, the court presumably would have expressly said so in the rule itself.” *Id.* ¶ 42. Thus, we agree with the trial court that Vidal’s claims are precluded.

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