

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROYSTON JOE TOM,
Petitioner.

No. 2 CA-CR 2016-0088-PR
Filed April 20, 2016

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NOT FOR PUBLICATION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. CR2010140615001DT
The Honorable William L. Brotherton Jr., Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Lisa Marie Martin, Deputy County Attorney, Phoenix
Counsel for Respondent

Royston Tom, Florence
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Miller concurred.

ECKERSTROM, Chief Judge:

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

¶2 After a jury trial, Tom was convicted of two counts of sexual assault and was sentenced to consecutive, aggravated ten-year prison terms for each offense. We affirmed his convictions and sentences on appeal. *State v. Tom*, No. 1 CA-CR 11-0902 (memorandum decision filed June 4, 2013). Tom sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but had found no viable claims to raise pursuant to Rule 32. In his subsequent pro se petition, Tom claimed his prosecution was “time barred by the statute of limitations,” no reasonable jury could have found him guilty beyond a reasonable doubt, and there had been several significant changes in the law applicable to his case, specifically *Crawford v. Washington*, 541 U.S. 36 (2004); *Blakely v. Washington*, 542 U.S. 296 (2004); and *Lawrence v. Texas*, 539 U.S. 558 (2003).¹ He also asserted his trial counsel had been ineffective for failing to raise arguments based on some of those cases. The trial court summarily dismissed Tom’s petition.

¹Tom also cited *State v. Thompson*, 198 Ariz. 142, 7 P.3d 151 (App. 2000), *vacated*, 200 Ariz. 439, ¶ 10, 27 P.3d 796, 798-99 (2001), which provides no authority.

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¶3 On review, Tom again claims his prosecution was barred by the statute of limitations and trial counsel was ineffective for failing to raise arguments based on *Lawrence*, *Blakely*, and *Crawford*.² He additionally complains that the “evidence shows that the victims were lying to the police and that the sex was consensual,” and states he wishes to “incorporate[]” that argument with his claim of ineffective assistance. For the first time on review, Tom also asserts the state’s prosecution of him was “vindictive” and his trial counsel was ineffective for failing to have sought admission of “the sexual history of each of the alleged victims.”

¶4 The trial court did not err in summarily rejecting Tom’s petition for post-conviction relief. His claim that his prosecution is barred by the statute of limitations is precluded pursuant to Rule 32.2(a)(3) because he could have raised it on appeal but did not. In his reply to the state’s response, Tom suggests he nonetheless may raise this claim because it is of sufficient constitutional magnitude to require his knowing and voluntary waiver. *See Stewart v. Smith*, 202 Ariz. 446, ¶ 9, 46 P.3d 1067, 1070 (2002). But, even had Tom raised this argument in his petition, a defense based on the statute of limitations is waived by the failure to raise it and, thus, does not require a knowing and intelligent waiver. *See State v. King*, 158 Ariz. 419, 425 n.6, 763 P.2d 239, 245 n.6 (1988); *cf. State v. Ruggiero*, 211 Ariz. 262, n.2, 120 P.3d 690, 695 n.2 (App. 2005) (“Generally an issue raised for the first time in a reply brief is waived.”). Accordingly, *Stewart* does not apply.

¶5 Additionally, Tom has not developed on review any argument that *Lawrence*, *Blakely*, or *Crawford* apply to his case or identified any arguments that trial counsel should have made based on those cases. Thus, he has waived this argument, and we do not address it further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review). Nor does he explain in his petition how his assertion that the victims were not truthful relates to any of those cases.

²Tom expressly abandons the other arguments he raised below.

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Accordingly, we need not address that argument. *See id.* Finally, we do not address the claims Tom has raised for the first time in his petition for review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”).

¶6 Although we grant review, we deny relief.