

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LARRY DONNELL DUNLAP,
Petitioner.

No. 2 CA-CR 2016-0209-PR
Filed August 17, 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NOT FOR PUBLICATION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 Pima County

No. CR052543

The Honorable James E. Marner, Judge

REVIEW GRANTED; RELIEF DENIED

Larry Donnell Dunlap, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Petitioner Larry Dunlap seeks review of the trial court’s order dismissing his successive petition for post-conviction relief and his motion for rehearing, 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). We find no such abuse here.

¶2 Based on acts he committed in 1995, Dunlap was convicted after a jury trial of one count of sexual abuse and five counts of child molestation. He had two direct appeals, resulting in a resentencing, *State v. Dunlap*, No. 2 CA-CR 96-0643 (Ariz. App. Apr. 21, 1998) (mem. decision), and a modification of his sentence upon resentencing, *State v. Dunlap*, No. 2 CA-CR 99-0084 (Ariz. App. Mar. 30, 2000) (mem. decision). The trial court imposed a combination of presumptive, concurrent and consecutive prison sentences totaling 69.5 years. The court denied relief in each of the four post-conviction proceedings Dunlap filed before the instant proceeding, as did this court on review. *State v. Dunlap*, No. 2 CA-CR 2013-0215-PR (Ariz. App. Oct. 7, 2013) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2011-0196-PR (Ariz. App. Oct. 19, 2011) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2004-0276-PR (Ariz. App. Feb. 11, 2005) (mem. decision); *State v. Dunlap*, No. 2 CA-CR 2002-0215-PR (Ariz. App. Sept. 11, 2003) (mem. decision). The trial court also denied relief on Dunlap’s fifth and most recent petition. This petition for review followed.

¶3 On review, Dunlap asserts the trial court is “hid[ing] behind the wall of ‘preclu[sion].’” His claims on review include the

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following: an attorney should have been appointed to represent him; he is entitled to an evidentiary hearing based on claims of newly discovered evidence regarding witnesses who were not asked to testify on his behalf; he submitted a meritorious claim of actual innocence; his trial attorney was ineffective; and, the prosecutor committed misconduct. Dunlap asks that this court vacate his convictions and sentences with prejudice.

¶4 In a thorough, well-reasoned ruling, the trial court identified the claims Dunlap had raised and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Dunlap has not persuaded us on review that the court's resolution of his claims was incorrect, or why he should be permitted to file another untimely and successive petition. No purpose would be served by restating the court's ruling in its entirety here; rather, we adopt it. *See id.* Moreover, to the extent Dunlap is asserting new claims for the first time on review, we do not consider them. *See Ariz. R. Crim. P. 32.9(c)(1)* (appellate court reviews issues presented to trial court); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not address arguments asserted for first time in petition for review).

¶5 Because Dunlap has not sustained his burden of establishing the trial court abused its discretion in denying his petition or his motion for rehearing, we grant review but deny relief.