

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ADAM ALCANTAR,
Petitioner.

No. 2 CA-CR 2016-0361-PR
Filed January 25, 2017

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR200601723
The Honorable Joseph R. Georgini, Judge

PETITION DISMISSED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Janina N. Walters, Deputy County Attorney, Florence
Counsel for Respondent

Adam Alcantar, Florence
In Propria Persona

STATE v. ALCANTAR
Decision of the Court

MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 Adam Alcantar seeks review of the trial court's ruling granting the state's motion to strike his successive and untimely petition for post-conviction relief, as well as the court's denial of his subsequent motion for reconsideration. Because there is no final decision on a petition for post-conviction relief for us to review pursuant to Rule 32.9(c), Ariz. R. Crim. P., we dismiss the petition for review.

¶2 After a jury trial, Alcantar was convicted of indecent exposure, two counts of child molestation, three counts of attempted sexual conduct with a minor, and four counts of sexual conduct with a minor. He was sentenced to concurrent and consecutive prison terms totaling 144 years. We affirmed his convictions and sentences on appeal. *State v. Alcantar*, No. 2 CA-CR 2009-0109 (Ariz. App. Apr. 30, 2010) (mem. decision). And we denied relief pursuant to his petition for review of the trial court's denial of his first petition for post-conviction relief. *State v. Alcantar*, No. 2 CA-CR 2011-0077-PR (Ariz. App. Jun. 10, 2013) (mem. decision).

¶3 In late 2015, Alcantar filed a motion seeking DNA¹ testing pursuant to Rule 32.12, which the trial court denied. Shortly thereafter, he filed a notice of post-conviction relief stating he wished to raise claims of newly discovered evidence and actual innocence. The court dismissed that proceeding, however, after Alcantar failed to timely file a petition for post-conviction relief. Alcantar then filed another notice, again claiming there was newly

¹Deoxyribonucleic acid.

STATE v. ALCANTAR
Decision of the Court

discovered evidence, accompanied by a petition for post-conviction relief.

¶4 The state moved to strike Alcantar’s petition, citing Rule 32.5 and asserting the petition did not comply with Rule 31.13(b)(1), Ariz. R. Crim. P., because it “cannot be read because the size of the text is too small.” The trial court granted the motion and denied Alcantar’s motion for reconsideration. This petition for review followed.

¶5 Rule 32.5 permits a trial court to return to the defendant any petition not complying with the rule, thereby providing that defendant thirty days to file a compliant petition. Although Alcantar cites Rule 32.9(c) in his petition for review, that rule only permits review of a “final decision of the trial court on the petition for post-conviction relief or the motion for rehearing.” Because the court apparently struck his petition pursuant to Rule 32.5, his proceeding has not ended and there is no final decision for this court to review.² See also Ariz. R. Crim. P. 32.6(c) (allowing summary dismissal of petition if “no remaining [timely and non-precluded] claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings”); 32.8(d) (permitting denial of petition after evidentiary hearing).

¶6 Accordingly, we dismiss Alcantar’s petition for review.

²We recognize the trial court did not strictly comply with Rule 32.5 by providing Alcantar with “an order specifying how the petition fails to comply with the rule.” Ariz. R. Crim. P. 32.5. And we express no opinion whether striking Alcantar’s petition was warranted. In the absence of a final decision on his petition, those issues are not before us.