

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

BRADLEY CORWIN BINKLEY,  
*Petitioner.*

No. 2 CA-CR 2017-0072-PR  
Filed March 31, 2017

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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NOT FOR PUBLICATION  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.*

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Petition for Review from the Superior Court in Yavapai County  
No. V1300CR201180164  
The Honorable Michael R. Bluff, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney  
By Bill R. Hughes, Deputy County Attorney, Prescott  
*Counsel for Respondent*

White Law Offices, PLLC, Flagstaff  
By Wendy F. White  
*Counsel for Petitioner*

STATE v. BINKLEY  
Decision of the Court

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**MEMORANDUM DECISION**

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

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ESPINOSA, Judge:

¶1 Bradley Binkley seeks review of the trial court's summary denial of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. For the following reasons, we grant review but deny relief.

¶2 After a jury trial, Binkley was convicted of two counts of luring a minor for sexual exploitation, class three felonies, and one count of attempted tampering with physical evidence, a class one misdemeanor. He was sentenced to a presumptive, 3.5-year term of imprisonment for one of the felony counts to be followed by lifetime probation for the other, with six-months' incarceration for the misdemeanor considered served by application of pre-sentence incarceration credits. This court affirmed his convictions and sentences on appeal. *State v. Binkley*, No. 1 CA-CR 12-0429, ¶ 1 (Ariz. App. Oct. 15, 2013) (mem. decision).

¶3 Binkley filed a timely notice of post-conviction relief and, in the counselled petition that followed, alleged that A.R.S. § 13-3554 is facially overbroad and therefore unconstitutional, that his consecutive sentences violate the double jeopardy clause of the United States and Arizona Constitutions, and that his appellate counsel was ineffective for failing to raise the double jeopardy issue on appeal. Based on an affidavit from one of the jurors filed with his petition, he also alleged the guilty verdicts were the product of improper jury coercion, and he maintained his trial counsel had rendered ineffective assistance in failing to have the jurors polled when the verdicts were rendered.

STATE v. BINKLEY  
Decision of the Court

¶4 The trial court addressed the substance of these claims and found none were colorable except the claim of jury misconduct, which Binkley later withdrew. *See State v. Kolmann*, 239 Ariz. 157, ¶ 8, 367 P.3d 61, 64 (2016) (colorable claim is one in which alleged facts “if true, would *probably* have changed the verdict or sentence”), *quoting State v. Amaral*, 239 Ariz. 217, ¶ 11, 368 P.3d 925, 928 (2016). The court then summarily denied the petition, *see id.*, and this petition for review followed. In it, Binkley asks us to review the trial court’s denial of (1) his claim that § 13-3554 is unconstitutional and (2) his claim that his convictions and sentences for two counts of luring a minor violate the constitutional prohibition against double jeopardy.

¶5 We review a trial court’s denial of post-conviction relief for an abuse of discretion, and we will affirm that ruling if it is legally correct for any reason. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Both of these constitutional claims could have been raised in Binkley’s direct appeal, but were not. Accordingly, they were properly denied—on the separate ground that they are precluded. *See* Ariz. R. Crim. P. 32.2(a)(3), (b) (claim of unconstitutional conviction or sentence, pursuant to Rule 32.1(a), precluded by waiver on appeal); 32.2(c) (“[A]ny court on review of the record may determine and hold that an issue is precluded.”). We thus need not consider the trial court’s analysis that these precluded claims were not colorable. *See* Ariz. R. Crim. P. 32.6(c) (in reviewing petition for summary disposition, trial court first “shall identify all claims that are procedurally precluded under this rule” and then determine whether any “remaining claim” is colorable).

¶6 We recognize that in Binkley’s petition below, he also raised a non-precluded claim that appellate counsel was ineffective in failing to argue his convictions and sentences violated double jeopardy principles. But he has not sought review of the trial court’s denial of that ineffective assistance claim, nor has he developed any argument related to it. As a result, that aspect of the court’s ruling is not before us. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”; “[f]ailure to raise any issue that could be raised in the petition . . . for review shall constitute waiver of appellate review of that issue”).

STATE v. BINKLEY  
Decision of the Court

¶7 Binkley has failed to show the trial court abused its discretion in denying his petition for post-conviction relief. Accordingly, although we grant review, relief is denied.