

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GARY J. KARPIN SR.,
Petitioner.

No. 2 CA-CR 2017-0074-PR
Filed March 21, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2006031057001SE
The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

Gary J. Karpin Sr., Tucson
In Propria Persona

STATE v. KARPIN
Decision of the Court

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Gary Karpin Sr. seeks review of the trial court’s order denying the relief requested in his successive petition for post-conviction relief filed pursuant Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Karpin has not met his burden of demonstrating such abuse here.

¶2 After a jury trial at which he represented himself, Karpin was convicted of twenty-three counts of theft by misrepresentation and one count of fraudulent schemes and artifices. The trial court imposed concurrent and consecutive prison terms totaling 15.75 years. We affirmed his convictions and sentences on appeal, *State v. Karpin*, No. 1 CA-CR 08-1047 (Ariz. App. Oct. 12, 2010) (mem. decision), as well as the imposition of restitution, *State v. Karpin*, No. 1 CA-CR 10-0158 (Ariz. App. Feb. 17, 2011) (mem. decision). Karpin then sought post-conviction relief, which the trial court denied, and this court denied relief on review. *State v. Karpin*, No. 2 CA-CR 2013-0309-PR (Ariz. App. Nov. 13, 2013) (mem. decision).

¶3 In 2015, Karpin filed a notice of and petition for post-conviction relief asserting a claim of newly discovered evidence pursuant to Rule 32.1(e), namely evidence that his advisory counsel had been sanctioned and disbarred for misconduct. He asserted his advisory counsel had been operating at “diminished capacity” during trial due to substance abuse and that counsel had interfered with the course of trial, thus violating his right to self-representation. The trial court summarily dismissed the petition noting, inter alia, that Karpin was precluded from raising any constitutional claim and

STATE v. KARPIN
Decision of the Court

that he had not shown how the disciplinary record of his advisory counsel was material to his case. This petition for review followed.

¶4 On review, Karpin repeats his claim that his advisory counsel interfered with his trial and asserts the recently discovered evidence of counsel’s disbarment and substance abuse supports that claim. Substantial interference by advisory counsel in the conduct of trial can violate a defendant’s Sixth Amendment right to self-representation. See *McKaskle v. Wiggins*, 465 U.S. 168, 178 (1984); *Faretta v. California*, 422 U.S. 806, 821 (1975). But constitutional claims cannot be raised in an untimely proceeding like this one.¹ Ariz. R. Crim. P. 32.1(a), 32.4(a).

¶5 Karpin attempts to couch this claim, however, in terms of newly discovered evidence pursuant to Rule 32.1(e). A claim of newly discovered evidence can be raised in an untimely proceeding. Ariz. R. Crim. P. 32.4(a). To prevail on such a claim, Karpin must establish, inter alia, that the evidence is material and “probably would have changed the verdict or sentence.” Ariz. R. Crim. P. 32.1(e). We agree with the trial court that the evidence underlying counsel’s subsequent disbarment does not support Karpin’s claims regarding counsel’s conduct in his trial. As the court observed, counsel’s struggles with substance abuse might explain his alleged misconduct, but it is not material to whether that conduct occurred. Karpin has identified no conduct by counsel in his case that is contained in the records related to counsel’s disbarment, much less any conduct of which he was previously unaware. Thus, his claim of newly discovered evidence fails.

¶6 We grant review but deny relief.

¹In any event, Karpin’s interference claim has been raised and rejected on its merits in a federal habeas corpus proceeding. *Karpin v. Ryan*, No. CV-13-02375-PHX-JAT, 2015 WL 2402669, at *3-4 (D. Ariz. May 20, 2015).