

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

STEVEN WILLIAM DYER,
Petitioner.

No. 2 CA-CR 2017-0150-PR
Filed June 20, 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NOT FOR PUBLICATION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. CR2001090180
The Honorable Rosa Mroz, Judge

REVIEW DENIED

COUNSEL

James J. Haas, Maricopa County Public Defender
By Louise Stark, Deputy Public Defender, Phoenix
Counsel for Petitioner

STATE v. DYER
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 Petitioner Steven Dyer seeks review of the trial court’s order denying his petition for post-conviction relief, 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). Because Dyer has not filed a petition compliant with Rule 32.9, we deny review.

¶2 After a jury trial in absentia in 2002, Dyer was convicted of public sexual indecency to a minor and twelve counts of sexual conduct with a minor. Upon his return to custody in 2012, the trial court sentenced Dyer to presumptive, concurrent and consecutive sentences totaling 240 years’ imprisonment. The convictions and sentences were affirmed on appeal. *State v. Dyer*, No. 1 CA-CR 12-0264 (Ariz. App. May 8, 2014) (mem. decision).

¶3 Dyer thereafter sought post-conviction relief, arguing he had received ineffective assistance of counsel in relation to counsel’s advice regarding plea offers and he was entitled to additional credit for pretrial incarceration. After an evidentiary hearing on the matter, the trial court granted additional presentence incarceration credit but denied relief on Dyer’s claim of ineffective assistance.

¶4 Dyer’s counsel thereafter filed a motion stating she had “determined that there [wa]s an insufficient basis for further pleadings in th[e] matter,” but that Dyer should be allowed “to seek further discretionary review of his claims in his own behalf.” The trial court granted the motion. Dyer filed a motion for continuance and a “notice of appeal from superior court post-conviction petition for

STATE v. DYER
Decision of the Court

review” in the trial court. In the latter, he requested counsel and additional time. Dyer also filed a document citing Rule 8.5, Ariz. R. Crim. P.,¹ and Rule 32.9, and titled as a motion for continuance in this court. We deemed the document a petition for review and granted a continuance upon our noting that his petition for review did not substantially comply with Rule 32.9(c). He was ordered to file a compliant petition by April 4, 2016.

¶5 Dyer, however, again filed a “notice of appeal” that did not substantially comply with Rule 32.9. Instead, he continued to insist counsel be appointed, despite his having been represented by counsel who declined to file a petition for review having found no meritorious claim to raise. *Cf.* Ariz. R. Crim. P. 32.4(c)(2); *Montgomery v. Sheldon*, 181 Ariz. 256, 260, 889 P.2d 614, 618 (1995) (when appointed counsel unable to find claims to raise in Rule 32 petition, counsel may ask that petitioner be permitted to file pro se petition), *superseded by statute on other grounds as recognized by State v. Smith*, 184 Ariz. 456, 459, 910 P.2d 1, 4 (1996). Although this court granted an extension of time in which to file a petition for review that complies with Rule 32.9, and more than a year has passed since that petition was due, Dyer has failed to file one.

¶6 Therefore, we deny review.

¹Rule 8.5 addresses trial continuances. Requests for extensions of time concerning petitions for review are subject to Rule 32.9(c).