

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

THOMAS STEWART JR.,  
*Petitioner.*

No. 2 CA-CR 2017-0163-PR  
Filed June 29, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2002020994  
The Honorable Mark H. Brain, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Thomas Stewart Jr., San Luis  
*In Propria Persona*

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**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Howard<sup>1</sup> concurred.

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ECKERSTOM, Chief Judge:

¶1 Petitioner Thomas Stewart Jr. 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). Stewart has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Stewart was convicted of second-degree murder, leaving the scene of a fatal injury accident, and two counts of aggravated assault. The trial court imposed presumptive, concurrent sentences, some of which were enhanced and the longest of which was sixteen years. The convictions and sentences were affirmed on appeal. *State v. Stewart*, Nos. 1 CA-CR 04-0240, 1 CA-CR 04-0359 (Ariz. App. Aug. 2, 2005) (consol. mem. decision).

¶3 Stewart thereafter sought post-conviction relief, which the trial court denied. In March 2010, Stewart again filed a notice of post-conviction relief, which the court dismissed as failing to meet the requirements of Rule 32.2(b). Stewart filed another notice in November 2010, as well as a "successive petition," and the court again denied relief.

¶4 In August 2015, Stewart sought post-conviction relief, apparently raising claims of perjury, prosecutorial misconduct, and

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<sup>1</sup>The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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ineffective assistance of trial counsel. The trial court denied relief, and Stewart filed an untimely motion for rehearing. The court denied that motion, as well as various other motions and requests Stewart had filed in early 2016 in March. Stewart now seeks review of that ruling.

¶5 In his petition for review, Stewart asserts claims of ineffective assistance of counsel, perjury and recantation by state witness, evidentiary errors, and addresses allegations made in 2003 about the Maricopa County Medical Examiner’s Office.<sup>2</sup> Each of these claims, however, was or could have been raised in previous post-conviction proceedings. We therefore cannot say the trial court abused its discretion in denying relief. *See* Ariz. R. Crim. P. 32.2(a)(2), (3), (b), 32.4(a).

¶6 Although we grant the petition for review, we deny relief.

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<sup>2</sup>Stewart also discusses federal-law principles of “Procedural Defaults,” which are not cognizable in Rule 32 proceedings.