

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

PATRICK REESE SLAY,
Petitioner.

No. 2 CA-CR 2017-0266-PR
Filed December 12, 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NOT FOR PUBLICATION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 Cochise County
No. CR920700368
The Honorable John F. Kelliher Jr., Judge

REVIEW GRANTED; RELIEF DENIED

Patrick Reese Slay, Buckeye
In Propria Persona

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MEMORANDUM DECISION

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

STARING, Presiding Judge:

¶1 Patrick Slay seeks review of the trial court’s denial of his petition for writ of habeas corpus, which constituted a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb the court’s order absent a clear abuse of discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Slay has not met his burden of demonstrating such abuse here.

¶2 Slay pled guilty to first-degree murder and armed robbery and was sentenced to life in prison for murder, to be followed by a twenty-three-year prison term for robbery. As part of the plea, he admitted having committed the offenses while on release. The trial court summarily dismissed his first petition for post-conviction relief, and we denied relief on review. *State v. Slay*, No. 2 CA-CR 95-0679-PR (Ariz. App. May 30, 1996) (mem. decision).

¶3 In 2016, Slay filed a petition for writ of habeas corpus citing Rule 32.1(g) and asserting the United States Supreme Court’s holdings in *Blakely v. Washington*, 542 U.S. 296 (2004), and its predecessor, *Apprendi v. New Jersey*, 530 U.S. 466 (2000), are a significant change in the law. He argued he did not validly waive his right to a jury trial to determine “all facts used to aggravate [his] sentence” and that *Blakely* and *Apprendi* are retroactively applicable. The trial court summarily denied the petition, and this petition for review followed.

¶4 On review, Slay repeats his claims. As the trial court correctly pointed out, however, this court has concluded *Blakely* was not retroactive and, thus, applied only to “cases not yet final on direct review the day

¹Although the trial court did not do so expressly, it was required by Rule 32.3 to treat Slay’s filing as a petition for post-conviction relief. Accordingly, we construe his petition for review as seeking relief pursuant to Rule 32.9(c).

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Blakely was decided.” *State v. Febles*, 210 Ariz. 589, ¶¶ 7, 9 & n.4 (App. 2005). Slay’s convictions were final long before *Blakely* was decided. *See id.* ¶ 9. He is not entitled to relief pursuant to Rule 32.1(g).

¶5 We grant review but deny relief.