

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

EARL FELTON CRAGO JR.,  
*Petitioner.*

No. 2 CA-CR 2019-0234-PR  
Filed March 26, 2020

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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NOT FOR PUBLICATION  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. 31.19(e).*

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Petition for Review from the Superior Court in Cochise County  
No. CR94000471  
The Honorable Laura Cardinal, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Harriette P. Levitt, Tucson  
*Counsel for Petitioner*

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MEMORANDUM DECISION

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

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BREARCLIFFE, Judge:

¶1 Earl Crago Jr. seeks review of the trial court’s order denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Crago has not met his burden of establishing such abuse here.

¶2 After a jury trial, Crago was convicted of first-degree murder, and the trial court sentenced him to life in prison without the possibility of release for twenty-five years. We affirmed Crago’s conviction and sentence on appeal, denied relief in part on a consolidated petition for review of the denial of his first petition for post-conviction relief, and remanded for an evidentiary hearing on two claims of ineffective assistance of counsel. *State v. Crago*, Nos. 2 CA-CR 95-0488, 2 CA-CR 98-0230-PR (consolidated) (Ariz. App. Mar. 18, 1999) (mem. decision). We subsequently denied relief on Crago’s petition for review of the denial of post-conviction relief after the evidentiary hearing. *State v. Crago*, No. 2 CA-CR 00-0259-PR (Ariz. App. Mar. 13, 2001) (mem. decision). We also denied relief on six more petitions for review from denials of post-conviction relief. *State v. Crago*, No. 2 CA-CR 2014-0379-PR (Ariz. App. Feb. 25, 2015) (mem. decision); *State v. Crago*, No. 2 CA-CR 2013-0402-PR (Ariz. App. Mar. 11, 2014) (mem. decision); *State v. Crago*, No. 2 CA-CR 2011-0162-PR (Ariz. App. Sept. 9, 2011) (mem. decision); *State v. Crago*, No. 2 CA-CR 2008-0396-PR (Ariz. App. May 12, 2009) (mem. decision); *State v. Crago*, No. 2 CA-CR 2004-0224-PR (Ariz. App. Mar. 29, 2005) (decision order); *State v. Crago*, No. 2 CA-CR 01-0381-PR (Ariz. App. Feb. 19, 2002) (mem. decision).

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

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¶3 In November 2018, Crago filed his eighth petition for post-conviction relief, raising claims of newly discovered material evidence and unconstitutional suppression of evidence.<sup>2</sup> Specifically, Crago asserted that before trial the prosecutor had advised him the victim’s blood was found in Crago’s car, causing Crago to maintain at trial that he killed the victim in self-defense. Crago argued he had learned in 2014 through a note from an employee at the prosecutor’s office that “the DNA analysis did not identify the victim’s blood in . . . Crago’s car.” Crago recognized that “[t]his issue was raised in the previous Rule 32” petition but argued it was not precluded because “the prosecutor committed perjury and suppressed material DNA evidence.”

¶4 The trial court summarily dismissed Crago’s petition. It determined that the evidence was not newly discovered because Crago “possessed knowledge of this claim, and supporting documents, since 2014, if not earlier,” and Crago raised the claim in his seventh petition for post-conviction relief. The court also noted that Crago had filed motions for reconsideration in April 1998, which were denied at that time, asserting, in part, that his trial counsel had failed to inform him that there were no “positive matches from the blood samples.” Although Crago “recast” his claims in the eighth petition as “prosecutorial misconduct,” the court determined that “the analysis remain[ed] the same.” Accordingly, the court found that Crago’s “intertwined” claims “were finally adjudicated in [Crago’s] 2014 Petition for Post Conviction Relief, as well as earlier proceedings before the trial judge, in 1998.” This petition for review followed.

¶5 On review, Crago argues the trial court erred in dismissing his Rule 32 petition without an evidentiary hearing. He contends he presented colorable claims of newly discovered material evidence and ineffective assistance of Rule 32 counsel. Relying on *Haines v. Kerner*, 404 U.S. 519 (1972), Crago also suggests that he was entitled to an evidentiary hearing because “pro se pleadings are held to less stringent standards.”<sup>3</sup>

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<sup>2</sup>Along with his petition, Crago filed a motion seeking sanctions for purported disclosure violations, which the trial court denied after dismissing his petition. Crago does not challenge that denial on review, and we do not address it further.

<sup>3</sup>Although Crago filed the eighth petition for post-conviction relief himself, counsel joined the case in January 2019 and filed the reply on his behalf.

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¶6 *Haines*, however, is not controlling here. Generally, in Arizona, “a defendant acting in propria persona is subject to the same rules as an attorney.” *State v. Cornell*, 179 Ariz. 314, 331 (1994). Moreover, *Haines* is factually distinguishable. In that case, the petitioner was an inmate who sought to recover damages for claimed injuries and deprivation of rights while in prison. *Haines*, 404 U.S. at 519-20. The United States Supreme Court held the petitioner’s “inartfully pleaded” complaint to “less stringent standards” and concluded it was sufficient to allow him an opportunity to offer proof. *Id.* at 520-21. Here, by contrast, at issue is Crago’s petition for post-conviction relief, in which he needed to “make a colorable showing that the allegations, if true, would have changed the verdict,” in order to obtain an evidentiary hearing. *State v. Krum*, 183 Ariz. 288, 292 (1995). But the court need not even reach the colorable-claim determination if the claims are otherwise precluded. *See* Ariz. R. Crim. P. 32.2(a)(2).

¶7 As to Crago’s claim of newly discovered material evidence, he raised the same claim based on the victim’s DNA evidence not matching blood found in Crago’s car as part of his seventh petition for post-conviction relief. *See Crago*, No. 2 CA-CR 2014-0379-PR, ¶ 3. That claim was finally adjudicated on the merits and is, therefore, precluded in this proceeding. *See* Ariz. R. Crim. P. 32.2(a)(2), (b).

¶8 As to Crago’s claim of ineffective assistance of Rule 32 counsel, that claim was not raised below. We do not address claims raised for the first time on review. *See* Ariz. R. Crim. P. 32.16(c)(2)(B) (petition for review must contain “issues the trial court decided that the defendant is presenting for appellate review”); *see also State v. Ramirez*, 126 Ariz. 464, 467-68 (App. 1980). And, in any event, as a non-pleading defendant, Crago has no constitutional right to the effective assistance of Rule 32 counsel. *See State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4 (App. 2013).

¶9 Accordingly, although we grant the petition for review, we deny relief.