

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOHN PIERRE BAKER,
Petitioner.

No. 2 CA-CR 2019-0260-PR
Filed May 4, 2020

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NOT FOR PUBLICATION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).

Petition for Review from the Superior Court in Pima County
No. CR057359
The Honorable Kimberly H. Ortiz, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

John P. Baker, Buckeye
In Propria Persona

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MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 John Baker seeks review of the trial court’s ruling dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb that ruling unless the court has abused its discretion. *See State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Baker has not sustained his burden of establishing such abuse here.

¶2 After a jury trial in 1999, Baker was convicted of one count of conspiracy to commit child abuse, ten counts of child abuse, and two counts of kidnapping a minor under the age of fifteen. The trial court imposed concurrent and consecutive prison terms totaling 86.5 years. This court affirmed Baker’s convictions and sentences on appeal. *State v. Baker*, No. 2 CA-CR 99-0222 (Ariz. App. Sept. 14, 2000) (mem. decision). Baker has sought post-conviction relief on several occasions, but the trial court has denied relief, as has this court on review. *State v. Baker*, No. 2 CA-CR 2017-0024-PR (Ariz. App. Apr. 25, 2017) (mem. decision); *State v. Baker*, No. 2 CA-CR 2016-0310-PR (Ariz. App. Dec. 5, 2016) (mem. decision); *State v. Baker*, No. 2 CA-CR 2013-0278-PR (Ariz. App. Aug. 29, 2013) (mem. decision); *State v. Baker*, No. 2 CA-CR 2013-0154-PR (Ariz. App. Aug. 21, 2013) (mem. decision); *State v. Baker*, No. 2 CA-CR 2008-0012-PR (Ariz. App. Sept. 18, 2008) (mem. decision); *State v. Baker*, No. 2 CA-CR 2006-0428-PR (Ariz. App. Feb. 28, 2007) (mem. decision); *State v. Baker*, Nos. 2 CA-CR 2005-0366-PR, 2 CA-CR 2006-0088-PR (Ariz. App. Jan. 25, 2007) (consol. mem. decision). This court also dismissed Baker’s last petition for review after he failed to comply with Rule 32.16, formerly Rule 32.9. *State v. Baker*, No. 2 CA-CR 2017-0197-PR (Ariz. App. July 28, 2017) (order).

¹ 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 July 2019, Baker filed the instant petition for post-conviction relief, asserting he was “actually innocent” of the kidnapping convictions because he was the victim’s legal guardian. He also argued he had a “tainted trial” because his counsel did not object when a codefendant testified at his trial that she was guilty. In addition, he maintained his “sentences [were] illegal in many ways,” including that all his sentences should have been concurrent, that A.R.S. § 13-604.01 was unconstitutional, and that the trial court improperly weighed the mitigating factors.

¶4 The trial court summarily dismissed the petition. It determined that relief was precluded because “[a]ll the issues [Baker] raises now have either been previously raised and adjudicated on their merits or have been waived because [Baker] had ample opportunity to raise them in his prior petitions but failed to do so.” The court additionally noted that Baker had “not set forth any exception under Rule 32.2(b) or provided reasons for not timely raising these claims in prior petitions.” This petition for review followed.

¶5 On review, Baker argues “there was one (1) issue that had never been raised previously, as [he] just learned about it and it was listed as such[,] but was not mentioned or ruled on.” But he does not identify what issue that is. It appears he is referring to his argument that he had a “tainted trial” because his counsel did not object to a codefendant’s testimony. At bottom, this appears to be a claim of ineffective assistance of counsel, which the trial court did address, properly finding any relief precluded because the issue could have been raised previously. *See* Ariz. R. Crim. P. 32.1(a), 32.2(a)(3).

¶6 In any event, to the extent Baker framed this as a claim of “newly discovered material facts” under Rule 32.1(e), the trial court did not err in summarily dismissing it. *See State v. Herrera*, 232 Ariz. 536, ¶ 14 (App. 2013) (we must affirm trial court’s ruling if legally correct for any reason). Baker alleged no facts showing that he was diligent in discovering and filing his claim. *See State v. Amaral*, 239 Ariz. 217, ¶ 9 (2016) (defendant entitled to evidentiary hearing if Rule 32.1(e) claim is colorable; requirements for colorable claim include: (1) evidence must appear to have existed at time of trial but be discovered afterward, (2) petition must allege facts from which court could conclude defendant was diligent in discovering facts and bringing them forward, (3) evidence must not simply be cumulative or impeaching, (4) evidence must be relevant, and (5) evidence must be such that it would likely have altered verdict or sentence).

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¶7 Baker next reasserts his claims that his sentences are illegal and that he is actually innocent of kidnapping. However, we agree with the trial court that these issues, as best as we understand them, have been previously raised and addressed. *See, e.g., Baker*, No. 2 CA-CR 2013-0154-PR, ¶¶ 1-3; *Baker*, No. 2 CA-CR 2008-0012-PR, ¶¶ 2-3; *Baker*, 2 CA-CR 2006-0428-PR, ¶ 3. But even assuming those claims were not precluded under Rule 32.2(a)(2), Baker has failed to “explain the reasons for not raising [them] in a previous notice or petition, or for not raising [them] in a timely manner.”² Ariz. R. Crim. P. 32.2(b). Accordingly, the court did not err in summarily dismissing them. *See id.*

¶8 In addition, Baker maintains the trial court failed to address in its ruling his assertion that “the prison system added to [his] sentences by imposing community supervision.” But even assuming the court did not consider this issue as part of his broader “illegal sentences” argument that the court found precluded, Baker is not entitled to relief. Baker has failed to provide, either below or on review, any documentation supporting his claim.³ *See* Ariz. R. Crim. P. 32.7(e) (“The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the allegations in the petition.”). And the Arizona Department of Corrections website shows that Baker’s “Release Type” is “Sentence Expiration Date,” not “Community Supervision.”

¶9 Accordingly, we grant review but deny relief.

²In his petition below, Baker asserted that he “recently learned” of his claims collectively. But that bald assertion—particularly when considered in conjunction with the similar, if not identical, claims raised in previous petitions—is insufficient. *See* Ariz. R. Crim. P. 32.2(b) (requiring “sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner”).

³Although Baker’s petition for post-conviction relief suggested he was attaching a “time computation showing community supervision,” no such document appears in the record.