

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DOUGLAS MAX BOLDT,
Petitioner.

No. 2 CA-CR 2020-0156-PR
Filed September 28, 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NOT FOR PUBLICATION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 Yavapai County
No. P1300CR20010395
The Honorable Thomas K. Kelly, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Yavapai County Attorney's Office, Prescott
By Sheila Sullivan Polk, County Attorney
Counsel for Respondent

Douglas Boldt, Florence
In Propria Persona

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MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Douglas Boldt seeks review of the trial court’s ruling summarily dismissing his successive attempt to obtain post-conviction relief under Rule 33, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Boldt has not shown such abuse here.

¶2 In 2002, Boldt pled guilty to felony first-degree murder of his infant daughter. At the change-of-plea hearing, Boldt admitted throwing the three-month-old infant “into her crib a couple of times” causing her to “str[i]k[e] her head” on the wooden headboard, fracturing her skull and resulting in her death. Before sentencing, he sought to withdraw from the plea, arguing he had been “under duress” and had only pled guilty “out of fear” of the death penalty, and insisted his daughter’s death had been an “accident.” The trial court denied that request; Boldt was sentenced to natural life in prison.

¶3 Before this proceeding, Boldt has sought and been denied post-conviction relief at least seven times, maintaining in each proceeding that his plea had been involuntary and he had lied about the factual basis.²

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.” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020).

²In two of those proceedings, this court denied relief pursuant to Boldt’s subsequent petitions for review. *State v. Boldt*, No. 1 CA-CR 15-0734 PRPC (Ariz. App. Sept. 19, 2017) (mem. decision); *State v. Boldt*, No. 2 CA-CR 2013-0227-PR (Ariz. App. Aug. 26, 2013) (mem. decision).

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In three proceedings, he also argued that his guilty plea was invalid because the predicate felony for felony murder – child abuse – had been dismissed as part of the plea agreement. In at least two proceedings, he additionally claimed the crib could not have caused the child’s injuries due to its construction – variously framing the argument in terms of ineffective assistance of trial counsel, inadequate factual basis, newly discovered evidence, and actual innocence.

¶4 In August 2019, Boldt filed a notice of post-conviction relief raising the same arguments, framing his argument regarding the crib in terms of newly discovered evidence. *See* Ariz. R. Crim. P. 33.1(e). The trial court summarily dismissed the notice, and this petition for review followed.

¶5 On review, Boldt repeats his claims. Even if we disregard that these claims have been repeatedly raised and rejected and are thus subject to preclusion under Rule 33.2(a)(2), the trial court did not err in summarily dismissing Boldt’s most recent effort to obtain post-conviction relief. As to his claims regarding the plea, he has identified no applicable exception to the timeliness requirements of Rule 33.4(b)(3). His claim of newly discovered evidence regarding the crib fails because the evidence is not newly discovered – any discrepancy between the victim’s injuries and the crib’s construction could have been discovered before sentencing.³ *See State v. Saenz*, 197 Ariz. 487, ¶ 13 (App. 2000) (“Evidence is not newly discovered unless it was unknown to the trial court, the defendant, or counsel at the time of trial and neither the defendant nor counsel could have known about its existence by the exercise of due diligence.”); *see also* Ariz. R. Crim. P. 33.1(e).

¶6 We grant review but deny relief.

³And, insofar as Boldt has again asserted his actual innocence under Rule 33.1(h), the alleged discrepancy raises no meaningful doubts about his guilt. The medical examiner testified the infant victim was struck twice in the head with sufficient force to rule out accidental trauma. And it is undisputed the victim was in Boldt’s sole care at the time of her injuries.