

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ROBERT FRED LESKOVSKY,  
*Petitioner.*

No. 2 CA-CR 2020-0134-PR  
Filed February 18, 2021

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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NOT FOR PUBLICATION  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 Pima County  
No. CR031215  
The Honorable Casey F. McGinley, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Robert F. Leskovsky, Florence  
*In Propria Persona*

STATE v. LESKOVSKY  
Decision of the Court

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MEMORANDUM DECISION

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

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BREARCLIFFE, Judge:

¶1 Robert Leskovsky seeks review of the trial court’s orders summarily dismissing his successive petition for post-conviction relief and motion for rehearing, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those orders unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Leskovsky has not shown such abuse here.

¶2 After a jury trial, Leskovsky was convicted of furnishing drugs to four individuals, including two minors, and of sexual conduct with a minor. The trial court imposed sentences that included multiple terms of life imprisonment. We affirmed Leskovsky’s convictions and sentences on appeal and denied relief on the claims raised in his consolidated petition for review of the trial court’s denial of his first petition for post-conviction relief. *State v. Leskovsky*, Nos. 2 CA-CR 91-0577, 2 CA-CR 92-0727-PR (Ariz. App. Mar. 23, 1993) (consol. mem. decision). We also denied relief on Leskovsky’s petitions for review from the court’s summary dismissal of his second and third petitions for post-conviction relief. *State v. Leskovsky*, No. 2 CA-CR 2002-0443-PR (Ariz. App. June 10, 2004) (decision order); *State v. Leskovsky*, No. 2 CA-CR 2007-0221-PR (Ariz. App. Dec. 7, 2007) (mem. decision). In March 2011, Leskovsky filed a fourth Rule 32 petition, which the court summarily dismissed.

¶3 Leskovsky filed his fifth Rule 32 petition in May 2020. Pursuant to Rule 32.1(a),<sup>1</sup> he argued he was denied counsel at a pre-trial

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<sup>1</sup>Leskovsky cited “Rule 32.1(a)(b)” in his petition below, asserting the trial court was deprived of subject matter jurisdiction because he was denied counsel at the hearing, a claim he repeats on review, and which he also raised, unsuccessfully, in his fourth Rule 32 petition. The court did not specifically address this claim in its ruling below. However, because this argument depends on Leskovsky’s claim that he was denied counsel, the court did not need to address it after rejecting the underlying premise. *See*

STATE v. LESKOVSKY  
Decision of the Court

hearing that was held on the first day of trial, June 20, 1991 (the hearing), to address Leskovsky's request for a new attorney, a claim he asserted he was not precluded from raising.<sup>2</sup> The trial court summarily dismissed Leskovsky's petition based on preclusion pursuant to Rule 32.2(a)(2), correctly noting that he had raised the same claim in his third Rule 32 petition and that this court had upheld the dismissal of that claim on review.<sup>3</sup> See *Leskovsky*, No. 2 CA-CR 2007-0221-PR, ¶¶ 5-6, 8, 10. Leskovsky filed a motion for rehearing, which the court denied. This petition for review followed.

¶4 Although Leskovsky raises multiple arguments on review, he primarily asserts that he was denied counsel at the hearing, maintaining his claim is not based on ineffective assistance of counsel.<sup>4</sup> Leskovsky argues extensively that the trial court here erred by precluding his claim in reliance on this court's "manifestly erroneous" and "flawed" ruling denying relief

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*State v. Banda*, 232 Ariz. 582, n.2 (App. 2013) ("We can affirm the trial court's ruling for any reason supported by the record."). Moreover, although claims raised under Rule 32.1(b) are not subject to preclusion under Rule 32.2(a)(3) (ground waived at trial, on appeal, or in previous post-conviction proceeding), they are subject to preclusion under Rule 32.2(a)(2) (ground finally adjudicated on merits on appeal or in previous post-conviction proceeding).

<sup>2</sup>Leskovsky so argued, despite acknowledging in his Rule 32 petition that he had "filed several Rule 32's in an attempt to have this [court] or Division II courts recognize what occurred" at the hearing.

<sup>3</sup>Notably, Leskovsky raised claims of ineffective assistance of counsel in his first, second, third, and fourth Rule 32 petitions, raising the same claim regarding the hearing as in his third petition.

<sup>4</sup>Citing Rule 32.16(c)(4), Leskovsky raises several arguments for the first time on review, asserting he is doing so "[i]n order to protect [himself] from waiver." Rule 32.16(c)(4) states that "[a] party's failure to raise any issue that could be raised in the petition for review or cross-petition for review constitutes a waiver of appellate review of that issue." However, because Leskovsky did not raise these arguments in his petition below, we do not address them. See *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (court of appeals does not address issues raised for first time in petition for review); see also 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").

STATE v. LESKOVSKY  
Decision of the Court

in the petition for review in his third post-conviction proceeding. *See Leskovsky*, No. 2 CA-CR 2007-0221-PR. To the extent Leskovsky is asking us to reconsider our prior ruling, it is not before us in this proceeding.<sup>5</sup> In addition, we find unavailing Leskovsky's attempt to avoid preclusion by arguing that the court incorrectly relied on that ruling and suggesting that the outcome here should somehow be different because he is raising a claim based on actual, rather than constructive, denial of counsel.

¶5 Notably, as we previously found, "Leskovsky's claim is, essentially, a claim of ineffective assistance of counsel, not a claim of actual deprivation of counsel." *Id.* ¶ 8. We also noted that "Leskovsky was represented throughout the proceedings, and the record belies his claim that he was constructively deprived of counsel." *Id.* Leskovsky's repeated assertions that he is now presenting a claim of denial of counsel rather than ineffective assistance of counsel does not make it so, and, as we previously found, his "characterizations of his claim [as something other than ineffective assistance of counsel] do not change its true nature." *Id.* ¶ 6. And, any claim of ineffective assistance of counsel is precluded and untimely in a successive proceeding. *See* Ariz. R. Crim. P. 32.1(a), 32.2(a)(2), (3), 32.4(b)(3)(A); *State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010) (ineffective assistance of counsel claim "cognizable under Rule 32.1(a)"); *see also State v. Spreitz*, 202 Ariz. 1, ¶ 4 (2002) ("Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded."). In any event, even assuming, without finding, that Leskovsky's claim could be characterized as denial of counsel, the court properly found it precluded under Rule 32.2(a)(2).

¶6 Additionally, in our prior ruling, we also rejected Leskovsky's assertion that *State v. Torres*, 208 Ariz. 340, ¶¶ 7-8 (2004), which addressed requests for substitute counsel, constituted a significant change in the law, noting there thus was no reason Leskovsky could not have raised his claim challenging the hearing earlier. *Leskovsky*, No. 2 CA-CR 2007-0221-PR, ¶ 9. We additionally noted that "the record establishes that the trial court did, indeed, inquire into Leskovsky's complaints about counsel, effectively conducting the kind of hearing the court prescribed in *Torres*." *Id.* We further concluded that the transcripts of the hearing, which Leskovsky attached to his third, fourth and fifth Rule 32 petitions, "do not support his

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<sup>5</sup>The Arizona Supreme Court denied Leskovsky's petition for review of our ruling in that matter.

STATE v. LESKOVSKY  
Decision of the Court

contention that he was actually or constructively deprived of counsel.” *Id.*  
¶ 6. Leskovsky nonetheless again challenges the sufficiency and fairness of the hearing as the basis for his argument that he was denied counsel, a claim which is plainly precluded.

¶7           Accordingly, we grant review but deny relief.