IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DARRELL CHRISTOPHER DANNER,
Petitioner.

No. 2 CA-CR 2020-0236-PR
Filed January 6, 2021

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NOT FOR PUBLICATION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 Maricopa County
No. CR2002092751
The Honorable Peter A. Thompson, Judge

REVIEW GRANTED; RELIEF DENIED

Darrell Christopher Danner, Globe
In Propria Persona

MEMORANDUM DECISION

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

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

¶1 Darrell Danner seeks review of the trial court's order dismissing his petition for post-conviction relief filed pursuant to Rule 32, 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). Danner has not met his burden of establishing such abuse here.

¶2 After a jury trial in 2002, Danner was convicted of second-degree murder and leaving the scene of a fatal-injury accident. He was sentenced to aggravated, consecutive prison terms totaling twenty-three years. We affirmed his convictions and sentences on appeal. *State v. Danner*, No. 1 CA-CR 03-0177 (Ariz. App. Mar. 9, 2004) (mem. decision). As a part of his appeal, Danner argued that the trial court had erred in sentencing him for a class three felony for fleeing the scene because it had failed to instruct the jury on causation and, under *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the jury had to find causation beyond a reasonable doubt before it could be used for sentence enhancement. *Danner*, No. 1 CA-CR 03-0177, ¶¶ 24-25. We found any error harmless, however, explaining that the jury had found Danner guilty of second-degree murder and "necessarily found that he caused the death of the victim." *Id.* ¶ 26.

¶3 In 2006, Danner sought post-conviction relief, arguing, among other things, that "[t]he trial court exceeded its authority by imposing

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[1] Our supreme court amended the post-conviction relief rules, effective January 1, 2020. 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.'" *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) (quoting Ariz. Sup. Ct. Order R-19-0012). "Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules." *Id.*

aggravated sentences based on facts not found by the jury or admitted by Danner." He relied on *Blakely v. Washington*, 542 U.S. 296 (2004), and maintained that the "aggravated sentences exceeded the 'statutory maximum'" and "violated his Sixth Amendment right to a trial by jury." In its dismissal of his petition, the trial court found this claim precluded. This court denied review. *State v. Danner*, No. 1 CA-CR 06-1014-PRPC (Ariz. App. Oct. 3, 2007) (order).

¶4 In September 2019, Danner filed a "Notice and Petition for Post-Conviction Relief," pursuant to Rule 32.1(a), (c), and (g). He again cited *Blakely* and argued the trial court had "exceeded its authority by imposing aggravated sentences based on facts not found by the jury." In addition, relying on *Arizona v. Munninger*, 209 Ariz. 473 (App. 2005), he maintained that this claim was not precluded because his direct appeal was pending when *Blakely* was decided. He also asserted that his first Rule 32 counsel had been deficient for "presenting fundamentally the same *Blakely* argument" as was presented on appeal. He further argued that the court had a duty in his first Rule 32 proceeding to "apply the proper legal authority," despite the state's failure to disclose *Munninger* in its response.

¶5 The trial court dismissed Danner's notice and petition. As relevant here, the court explained, "Assuming, without deciding, that [Danner's] sentences are inconsistent with *Blakely*, [Danner] still is not entitled to relief" because he cited "no cases holding that *Munninger* is a significant change in the law" and *Munninger* has been abrogated. It also determined his *Blakely* argument had previously been raised and rejected and Danner could not "repackage his arguments as a Rule 32.1(g) claim to circumvent preclusion." Danner filed a motion for reconsideration, which the trial court seemingly treated as a motion for rehearing and denied. This petition for review followed.

¶6 On review, Danner again contends that *Blakely* applies to his case because his appeal was pending when that case was decided. And he maintains that, in contravention of *Blakely*, the trial court erroneously relied on factors not found by the jury to aggravate his sentences. Danner further contends that *Munninger* established his "claim is not precluded in a successive" proceeding for post-conviction relief.[2]

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[2]Danner does not reassert the other claims, including ineffective assistance of his first Rule 32 counsel, raised in his petition below. We therefore do not consider them. *See* Ariz. R. Crim. P. 32.16(c)(4) ("A party's failure to raise any issue that could be raised in the petition for review or

¶7 Danner's reliance on *Munninger* is misplaced. In that case, another division of this court determined that the defendant had not waived on direct appeal whether his sentence was invalid under *Blakely* by failing to raise the issue at sentencing.[3] *Munninger*, 209 Ariz. 473, ¶¶ 1-2, 12. Preclusion in a post-conviction relief proceeding, however, is broader than waiver on appeal. *See* Ariz. R. Crim. P. 32.2(a) (explaining three bases for preclusion). Although claims under Rule 32.1(g) are not subject to preclusion as "waived at trial or on appeal, or in any previous post-conviction proceeding," they are subject to preclusion as "finally adjudicated on the merits in an appeal or in any previous post-conviction proceeding." Ariz. R. Crim. P. 32.2; *see also State v. Shrum*, 220 Ariz. 115, ¶ 12 (2009) ("Rule 32.2(a) precludes collateral relief on a ground that either was or could have been raised on direct appeal or in a previous [post-conviction relief] proceeding.").

¶8 Danner's argument that the trial court erred in relying on factors not found by the jury to aggravate his sentence was raised in his first proceeding for post-conviction relief. Any such issue is therefore precluded in this successive proceeding.[4] *See* Ariz. R. Crim. P. 32.2(b). As the trial court pointed out, Danner is not entitled to a second chance by now framing the issue as a significant change in the law. *Cf. Shrum*, 220 Ariz. 115, ¶ 12 (discussing principles of finality). We therefore find no abuse of discretion in the summary dismissal of Danner's second petition for post-conviction relief. *See Roseberry*, 237 Ariz. 507, ¶ 7.

¶9 Accordingly, we grant review but deny relief.

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cross-petition for review constitutes a waiver of appellate review of that issue.").

[3]*Munninger* has been abrogated in part. In *State v. Martinez*, 210 Ariz. 578, ¶ 27 (2005), our supreme court explained, "Because at least one aggravating factor was implicit in the jury's verdict, the verdict exposed [the defendant] to a maximum sentence" and "[t]he trial court's consideration of additional aggravating factors in imposing a sentence within this range did not violate *Blakely*."

[4]Even assuming the trial court erred in rejecting Danner's claim on preclusion grounds in his first proceeding for post-conviction relief, Danner had the opportunity to challenge that decision in his prior petition for review. *See Danner*, No. 1 CA-CR 06-1014-PRPC.