IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LAIRD LAWSON RODEN,
Petitioner.

No. 2 CA-CR 2022-0072-PR
Filed September 12, 2022

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NOT FOR PUBLICATION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
Nos. CR028632 and CR030648
The Honorable Kyle Bryson, Judge

REVIEW GRANTED; RELIEF DENIED

Laird L. Roden, Florence
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

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

¶2 After a 1990 jury trial, Roden was convicted of thirty-four felonies—including burglary, kidnapping, sexual assault, attempted sexual assault, armed robbery, sexual abuse, theft by control, and aggravated assault—involving seven victims. The trial court imposed a combination of concurrent and consecutive prison terms totaling 245 years. This court affirmed his convictions and sentences on appeal. *State v. Roden*, No. 2 CA-CR 90-0826 (Ariz. App. Feb. 25, 1992) (mem. decision). Roden initiated a proceeding for post-conviction relief in 2002, but the trial court denied relief after an evidentiary hearing on one of his claims of ineffective assistance of counsel. This court denied relief on review. *State v. Roden*, No. 2 CA-CR 2004-0339-PR (Ariz. App. June 14, 2005) (mem. decision).

¶3 In February 2022, Roden simultaneously filed a successive notice of and petition for post-conviction relief. He requested relief under Rule 32.1(a), (c), (e), (f), and (h). Roden argued that individuals at the Pima County Sheriff's Office and Pima County Attorney's Office had "suppressed exculpatory evidence," including "the identity of a male semen donor as a third person involved in a crime [Roden] was charged with" and "material facts relating to the true racial identity of [a victim's] attacker." Based on that evidence, he asserted a violation under *Brady v. Maryland*, 373 U.S. 83 (1963), argued his trial counsel had rendered ineffective assistance, and maintained he was actually innocent. He also challenged his prison term, arguing that "the imposition of enhanced sentences was error." In addition, Roden requested the appointment of Rule 32 counsel.

¶4 The following month, the trial court dismissed both the notice and petition. The court concluded that Roden's claims of ineffective assistance of counsel and sentencing error were precluded. The court rejected his claim of newly discovered material facts because Roden had cited "no evidence that any [DNA] tests actually exist, or if they were, when they were discovered." Citing Rule 32.2(b), the court also noted that Roden had "not provided a sufficient reason as to why this claim was not raised in a prior appeal or petition for post-conviction relief." As to his claim under Rule 32.1(f), the court observed that it "appears to be related to the . . . exculpatory evidence" but concluded that Roden had cited "no evidence that any such evidence exists or that it was in the possession of the Pima County Attorney's Office." Finally, in dismissing Roden's claim of actual innocence, the court determined that Roden had, again, "not provided sufficient reason for why this claim was not raised earlier, or on direct appeal" and also had not pointed "to specific evidence that would support his claim." Because all the claims were dismissed, the court also denied Roden's request for appointment of Rule 32 counsel. Roden filed a motion for rehearing and a motion for reconsideration, both of which the court denied. This petition for review followed.

¶5 On review, Roden first argues the trial court erred in finding his claims of ineffective assistance of counsel preluded. He maintains that the ineffective assistance claims raised in this proceeding "are separate and new from his first" proceeding, and he reasons that the court erred in relying on *State v. Bennett*, 213 Ariz. 562 (2006), which was decided "three years after his initial Rule 32." But Roden misapprehends the rule of preclusion.

¶6 "A defendant is precluded from relief under Rule 32.1(a) based on any ground . . . waived at trial or on appeal, or in any previous post-conviction proceeding . . . ." Ariz. R. Crim. P. 32.2(a)(3). A claim of ineffective assistance of counsel arises under Rule 32.1(a). *State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010). Because Roden could have raised these claims in his first Rule 32 proceeding—despite raising other ineffective assistance claims at that time—they are now precluded.[1] *See State v. Spreitz*, 202 Ariz.

[1]To the extent Roden attempts to raise a claim of ineffective assistance of Rule 32 counsel, he cannot do so. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (appellate court will generally not review claims not raised below because trial court not given opportunity to consider them); *see also State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4 (App. 2013) (for non-pleading defendants, claim that Rule 32 counsel was ineffective not cognizable in subsequent Rule 32 proceeding).

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." (emphasis omitted)); *Bennett*, 213 Ariz. 562, ¶ 14 (same). The trial court therefore did not abuse its discretion in dismissing these claims. *See Martinez*, 226 Ariz. 464, ¶ 6.

¶7 Roden also seems to challenge the trial court's determination that his *Brady* claim was "preclud[ed]." But the court did not address a standalone *Brady* claim, instead apparently interpreting Roden's suppressed-evidence argument as falling under Rule 32.1(e). To the extent Roden attempted to raise a separate *Brady* claim, it also arises under Rule 32.1(a). *See Brady*, 373 U.S. at 87 (suppression by state "of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment"). As such, it too is precluded. *See* Ariz. R. Crim. P. 32.2(a)(3).

¶8 As to his claim of newly discovered material facts under Rule 32.1(e), Roden argues the trial court erred in rejecting this claim because he presented "ample evidence" that the Pima County Attorney's Office and Pima County Sheriff's Office had "suppressed exculpatory evidence or material facts and the identity of a material witness." But he does not address the court's alternate conclusion that this claim is precluded under Rule 32.2(b).

¶9 When a defendant raises a claim under Rule 32.1(b) through (h) in a successive or untimely proceeding, "the defendant must explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner." Ariz. R. Crim. P. 32.2(b). "If the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner, the court may summarily dismiss the notice." *Id.* In his successive Rule 32 notice and petition, Roden failed to meaningfully explain why his claim could not have been raised sooner, nor does he do so on review. Although he has suggested that the evidence and information was "kept from [his] knowledge," he has not explained when he learned of it. Notably, the attachments supporting his claim have a file-stamp date from 2003. We therefore cannot say the court abused its discretion in dismissing this claim. *See Martinez*, 226 Ariz. 464, ¶ 6; *see also State v. Boteo-Flores*, 230 Ariz. 551, ¶ 7 (App. 2012) (we must affirm trial court's ruling if legally correct for any reason).

¶10 Finally, Roden challenges his prison sentence, maintaining that his "illegally aggr[a]vated and enhanced sentence to 'life,' without the possibility of parole . . . [i]s wholly illegal." But Roden does not meaningfully develop this argument or address the trial court's conclusion that this claim is precluded because it was "fully adjudicated on the merits on appeal and the sentences were affirmed." *See* Ariz. R. Crim. P. 32.2(a)(2), (b). We therefore deem this argument waived and do not address it further.[2] *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013).

¶11 Accordingly, we grant review but deny relief.

[2]Roden does not reassert his claim of actual innocence under Rule 32.1(h). We therefore do not address it. *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 cross-petition for review constitutes a waiver of appellate review of that issue.").