

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MICHAEL GEORGE KOGIANES,
Petitioner.

No. 2 CA-CR 2023-0030-PR
Filed February 27, 2023

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NOT FOR PUBLICATION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 Mohave County
No. CR14933
The Honorable Rick Lambert, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Matthew J. Smith, Mohave County Attorney
By Matthew J. Smith, County Attorney, Kingman
Counsel for Respondent

Michael G. Kogianes, Yuma
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

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

¶2 Kogianes was convicted of two counts of first-degree murder committed in 1992 and sentenced to concurrent life terms “without possibility of release on any basis until the completion of the service of twenty-five calendar years.” 1993 Ariz. Sess. Laws, ch. 153, § 1. We affirmed his convictions and sentences on appeal. *State v. Kogianes*, 1 CA-CR 94-0210 (Ariz. App. Dec. 12, 1995) (mem. decision). In 1997, the trial court denied Kogianes’s petition for post-conviction relief, and this court denied review. *State v. Kogianes*, 1 CA-CR 97-0200-PR (Ariz. App. Mar. 31, 1998) (order).

¶3 In June 2022, Kogianes filed a notice of and petition for post-conviction relief. In his notice, Kogianes indicated he was raising claims under Rules 32.1(b), (c), (d), and (g). In his accompanying petition, Kogianes appeared to argue that the Board of Executive Clemency had erred by rejecting his applications for parole and to assert he must be granted parole because the parole board had been abolished. The trial court summarily dismissed the proceeding, noting it had no authority to overrule the clemency board’s decision and there was no colorable claim based on “the Board of Pardons and Paroles being abolished.”

¶4 In his subsequent motion for rehearing, Kogianes framed his claims as a constitutional claim under Rule 32.1(a) and a claim he was being held in custody after his sentence had expired under Rule 32.1(d). His argument, it seemed, was that because the parole board had been abolished and he had served twenty-five years, he should be released from prison.

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The trial court denied the rehearing motion. This petition for review followed.

¶5 Kogianes’s position on review is difficult to determine. He seems to believe that, because parole was abolished after he committed his offenses, yet he is parole-eligible, he is entitled to release.¹ See A.R.S. § 41-1604.09(I)(1); *Chaparro v. Shinn*, 248 Ariz. 138, ¶¶ 3, 10 (2020). There is no question that Kogianes is eligible for parole – there was no natural life sentence when he committed his offenses. See 1993 Ariz. Sess. Laws, ch. 153, § 1; § 41-1604.09(I)(1). But eligibility for parole means only that he is entitled to be considered for parole – not that it will be granted.

¶6 Indeed, Kogianes acknowledges that he has had parole proceedings before the Board of Executive Clemency, which replaced the Board of Pardons and Paroles in 1994. 1993 Ariz. Sess. Laws, ch. 255, § 64; see also *In re Hamm*, 211 Ariz. 458, n.2 (2005) (clarifying that “[t]he Board of Pardons and Paroles is now the Arizona Board of Executive Clemency”). Insofar as he complains his proceedings should have been before the now-nonexistent Board of Pardons and Parole, he has identified no relevant difference between the two bodies. See *State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim).

¶7 We grant review but deny relief.

¹We assume, without deciding, that Kogianes’s claim that he is eligible or entitled to parole is cognizable under Rule 32.1(d) and raisable under Rule 32.4(b)(3)(B). We note, however, that insofar as Kogianes claims the Board of Executive Clemency erred by denying his applications for parole, that claim is not cognizable under Rule 32.