

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUN 23 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0075-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
DOUGLAS DWAYNE GAINES,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200401001

Honorable Kevin D. White, Judge

REVIEW GRANTED; RELIEF DENIED

Douglas D. Gaines

Hinton, OK  
In Propria Persona

B R A M M E R, Judge.

¶1 In this petition for review, Douglas Gaines challenges the trial court's summary dismissal of the latest in a series of petitions for post-conviction relief Gaines has filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb a denial of post-conviction relief unless we find the court clearly has abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2           Gaines is serving an enhanced, presumptive, 7.5-year prison sentence imposed in May 2006 after a jury had found him guilty of aggravated assault, a dangerous-nature offense. We affirmed the conviction and sentence on appeal, *State v. Gaines*, No. 2 CA-CR 2006-0230 (memorandum decision filed Mar. 20, 2007), and have upheld the trial court’s denial of relief in two previous post-conviction proceedings. *State v. Gaines*, No. 2 CA-CR 2007-0357-PR (memorandum decision filed May 16, 2008); *State v. Gaines*, No. 2 CA-CR 2007-0258-PR (memorandum decision filed Feb. 7, 2008).

¶3           In July 2009, Gaines initiated the current proceeding by filing a document entitled “Post Conviction Claim of Relief under United States Supreme Court Decision Bobby Lee Holmes, Petitioner, vers[u]s South Carolina[,], No. 04-1327[,], Relief pursuant to A[.]R[.]S[.] 32.1(a)(e)(g)[,], specifically Bobby Lee Holmes vacated Judgment and Sentence on and for Constitutional Precedent and Mandates.” In it, Gaines complained that trial counsel had failed to call available defense witnesses, thereby denying him “a ‘meaningful opportunity to present a complete defense’” and various other constitutional rights. The trial court dismissed the petition summarily, finding Gaines had not complied with Rule 32.2(b) or demonstrated his current claims were exempt from preclusion. *See* Ariz. R. Crim. P. 32.2(b) (stating requirements for asserting untimely or successive claims), 32.6(c) (providing for summary disposition of claims presenting no “material issue of fact or law [that] would entitle the defendant to relief”).

¶4           Gaines next filed a document entitled “Response: Motion To Supreme Court Mandate Ruling Petitioner Filed on July 16th 2009. This Significant Change of Law Applies to My Case Where the Honorable Courts Misinterpreted This Filing To Be Ineffective Assistance of Counsel and Not the Complete Defense It Was Intended to Serve under Bobby Lee Holmes vers[u]s South Carolina[,], No. 04-1327.” Treating the

“Response: Motion” as a motion for reconsideration, the trial court denied it, finding the Supreme Court’s decision in *Holmes v. South Carolina*, 547 U.S. 319 (2006), “d[id] not apply in any significant way” to Gaines’s case.<sup>1</sup> This petition for review followed.

¶5 The essence of Gaines’s current claims—like those raised in his previous post-conviction proceedings—is that the evidence at trial was insufficient to support his conviction; that other, exculpatory evidence should have been presented; and that defense counsel was ineffective. The trial court properly ruled these claims precluded, and we find no abuse of its discretion in summarily denying relief.

¶6 We grant the petition for review but deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Judge

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<sup>1</sup>In *Holmes*, the United States Supreme Court invalidated a South Carolina evidentiary rule that permitted, or possibly required, the exclusion of defense evidence alleging a third party had committed the crime at issue whenever “there [wa]s strong evidence of [a defendant’s] guilt, especially . . . strong forensic evidence.” *Holmes*, 547 U.S. at 329, quoting *State v. Holmes*, 361 S.C. 333, 342, 605 S.E.2d 19, 24 (2004). The rule thus made the admissibility of defense evidence of third-party guilt dependent on the strength of the state’s evidence against the defendant. Finding such a rule did not “rationally serve the end that . . . third-party guilt rules were designed to further,” *Id.* at 330-31, the Court held the South Carolina rule arbitrarily “violate[d] a criminal defendant’s right to have ‘a meaningful opportunity to present a complete defense.’” *Id.* at 331, quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986).