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

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. CARL RAY BUSKE, Petitioner.	2 CA-CR 2010-0092-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20061513

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Carl R. Buske

Tucson
In Propria Persona

E S P I N O S A, Judge.

¶1 In this petition for review, Carl Buske challenges the trial court's summary dismissal of the pro se petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb a court's denial of post-conviction relief unless we

find it has clearly abused its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 A jury found Buske guilty of twenty-nine counts of sexual exploitation of a minor under the age of fifteen, all stemming from Buske's possession of child pornography. The trial court sentenced him to prison for mitigated, consecutive terms totaling 290 years. His sentences were also enhanced because the offenses were dangerous crimes against children. This court affirmed his convictions and sentences on appeal. *State v. Buske*, No. 2 CA-CR 2007-0171 (memorandum decision filed Oct. 9, 2008).

¶3 Buske then filed a notice of post-conviction relief, and the trial court appointed counsel. Counsel filed a notice pursuant to Rule 32.4(c)(2), avowing she had reviewed the entire record but had found "no arguably meritorious legal issues to raise" in the post-conviction proceeding. Buske subsequently filed a pro se petition for post-conviction relief, raising three issues: first, whether the underlying search and seizure that led to his arrest had been conducted illegally; second, whether A.R.S. § 13-3553, the statute defining the offense of sexual exploitation of a minor, was unconstitutionally overbroad or vague; and third, whether his sentences had been enhanced improperly under former A.R.S. § 13-604.01 based on the offenses' being dangerous crimes against children.

¶4 The trial court found all three issues precluded—the first because Buske had already raised it on appeal and the other two because they could have been raised on

appeal, were not, and therefore had been waived.[1] *See* Ariz. R. Crim. P. 32.2(a)(2), (3). In its detailed minute entry ruling, the court clearly identified and correctly analyzed the issues Buske presented, setting forth the applicable law and explaining why his claims are precluded. We approve and adopt its order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court['s] rehashing the trial court's correct ruling in a written decision").

¶5 Buske's petition for review largely repeats the assertions in his petition for post-conviction relief. Additionally, in a short section addressing the stated issue of "[w]hether petitioner can be precluded from raising these claims in [a] Rule 32 proceeding," he cites *State v. Thompson*, 120 Ariz. 202, 584 P.2d 1193 (App. 1978), for the proposition that preclusion must be specifically pleaded and proved. "The Court," he asserts, "may not base its decision on preclusion where it has not been pleaded." Not only is Buske's argument legally incorrect,[2] it is also factually mistaken because the state did assert preclusion in its response to the petition for post-conviction relief below.

[1]Although Buske devoted approximately four pages of his petition below to an exposition of the law governing ineffective assistance of counsel, he did not actually assert a specific claim of ineffectiveness by either his trial or appellate counsel. Appropriately, therefore, the trial court's minute entry ruling does not mention ineffective assistance.

[2]*Thompson* was decided before our legislature in 1995 amended A.R.S. § 13-4232(C) to provide: "Though the state has the burden to plead and prove grounds of preclusion, any court on review of the record may determine and hold that an issue is precluded regardless of the state's failure to raise the preclusion issue." *See* 1995 Ariz. Sess. Laws, ch. 198, § 4; Ariz. R. Crim. P. 32.2(c).

Buske also lists in his petition for review the several grounds for relief provided in Rule 32.1(d), (e), (f), and (g) that may be exempt from preclusion pursuant to Rule 32.2(b), but he has not developed an argument or alleged any facts that would bring his claims within any of those exceptions.[3]

¶6 In short, Buske has not demonstrated that the trial court abused its discretion in summarily dismissing his precluded claims. Although we grant the petition for review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Presiding Judge

[3]In a section of his petition for review entitled "Statement of Fact Material to the Issues Presented To Be Decided with Argument," Buske asserts that his sentencing claim is not precluded because the trial court lacked jurisdiction to impose an illegal sentence, and a lack of subject matter jurisdiction may be raised at any time. As a ground for relief under Rule 32, however, such a claim would fall either under Rule 32.1(a) (unconstitutional conviction or sentence) or under Rule 32.1(c) (excessive or otherwise unauthorized sentence), and claims brought under those subsections are not exempted from preclusion by Rule 32.2(b).