

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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SEP -1 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0183-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
LARRY LEE WASHINGTON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR16604

Honorable John S. Leonardo, Judge

REVIEW GRANTED; RELIEF DENIED

Larry Lee Washington

Tucson
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 In 1986, a jury found petitioner Larry Lee Washington guilty of first-degree burglary, kidnapping, sexual assault, and theft by control, all committed in October 1985. The trial court sentenced Washington to consecutive and concurrent, aggravated, enhanced prison terms totaling sixty years. We affirmed Washington's convictions and sentences on appeal. *State v. Washington*, No. 2 CA-CR 4527-2 (memorandum decision

filed Jan. 8, 1987). Washington has filed several petitions for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. We denied relief on two of those petitions, denied review on another petition, and granted relief in part on another petition. This petition for review followed the trial court's denial of relief on Washington's fifth¹ petition for post-conviction relief and his motion for reconsideration, filed in propria persona. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶2 Washington argues, as he did below, that appellate counsel was ineffective for failing to challenge his consecutive sentences, asserting that concurrent sentences should have been imposed because the offenses occurred on the same occasion. He asks this court to remand the matter to the trial court for an evidentiary hearing. The trial court denied relief in a thorough minute entry order and did so again when it denied Washington's motion for reconsideration, making it clear that Washington's ineffective assistance claim was precluded because he could have raised it in a previous post-conviction petition. *See* Rule 32.2(a)(3). It also noted that his claim was not, in any event, colorable. In its orders, the court clearly identified Washington's argument and correctly ruled on it in a manner that will allow any future court to understand its resolution. We therefore approve and adopt the trial court's rulings and find no purpose

¹Although the record is not entirely clear, for purposes of this decision we presume the trial court is correct that this is Washington's fifth post-conviction proceeding.

would be served in setting forth the orders in their entirety in this decision. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 Because we conclude the trial court did not abuse its discretion by dismissing Washington's petition for post-conviction relief and his motion for reconsideration, we grant the petition for review and deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge