

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

OCT -8 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0222-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CARLOS VEGA CASTILLO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR58846

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Carlos Castillo

Florence
In Propria Persona

B R A M M E R, Presiding Judge.

¶1 Petitioner Carlos Castillo seeks review of the trial court's order entered on June 4, 2010, in which it denied his motion for rehearing and declined to alter its previous ruling of March 31, 2010, summarily dismissing Castillo's second petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's

ruling unless it has clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Pursuant to a plea agreement, Castillo was convicted of two counts of second-degree child molestation, both preparatory dangerous crimes against children, committed in July and August 1996. The trial court sentenced him in April 1998 to a presumptive, ten-year prison term on one of the counts and to a consecutive term of lifetime probation on the other.¹ He did not seek review of either his conviction or sentence.

¶3 Released from prison in September 2006, Castillo violated the conditions of his probation within a year. He admitted four of the nine violations alleged in a petition for revocation of probation filed in October 2007 and, at a disposition hearing in February 2008, the trial court revoked his probation and sentenced Castillo to another ten-year prison term. He filed a timely notice of post-conviction relief in March 2008.

¶4 After appointed counsel filed a petition for post-conviction relief alleging ineffective assistance of counsel in connection with the revocation proceedings, Castillo moved to strike counsel's petition as unauthorized. The trial court granted Castillo leave to proceed in propria persona and file a supplemental petition. The petition he filed in April 2009 raised claims pertaining not to the revocation of his probation and related disposition order in 2007 and 2008 but, rather, to the entry of his guilty plea and original sentencing in 1998. After briefing was complete, the trial court denied relief in a minute

¹The plea agreement expressly provided for the possible imposition of a consecutive term of lifetime probation "pursuant to A.R.S. § 13-902(E)."

entry filed on September 11, 2009. Castillo did not seek review of that ruling pursuant to Rule 32.9.

¶5 Castillo initiated the present proceedings in February 2010 with the simultaneous filing of a second notice of and petition for post-conviction relief pursuant to Rule 32. Citing our supreme court's holding in *State v. Peek*, 219 Ariz. 182, 195 P.3d 641 (2008), he argued the trial court had imposed an illegal sentence in 1998 because a term of lifetime probation was not statutorily authorized for his two preparatory dangerous crimes against children when he committed the offenses in 1996. He also alleged trial counsel had been ineffective. In its order of March 31, 2010, the court ruled Castillo's sentencing claim was precluded. It then confirmed and ratified that ruling in its order of June 4, 2010, denying Castillo's motion for rehearing and expressly declaring his ineffective assistance claim also precluded.

¶6 Together, the trial court's March and June minute entry orders clearly identify, appropriately analyze, and correctly resolve the issues raised in Castillo's successive petition for post-conviction relief. Because neither claims of an illegal sentence nor claims of ineffective assistance of counsel are exempt from preclusion under Rule 32.2(b), the court correctly ruled Castillo's latest claims precluded. *See State v. Shrum*, 220 Ariz. 115, ¶¶ 6-7, 23, 203 P.3d 1175, 1177, 1180 (2009) (holding illegal-sentence claim precluded); *Peek*, 219 Ariz. 182, ¶ 4, 195 P.3d at 642 (addressing precluded claim of illegal sentence because state waived preclusion); *Swoopes*, 216 Ariz. 390, ¶ 42, 166 P.3d at 958 (fundamental error not excepted from preclusion). We find no

abuse of the trial court's discretion in dismissing Castillo's second petition for post-conviction relief.

¶7 Although we grant the petition for review, we deny relief.

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

CONCURRING:

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

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