

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,)	2 CA-CR 2008-0290-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JAMES E. GRANINGER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-32730

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

James E. Graninger

Florence
In Propria Persona

PELANDER, Chief Judge.

¶1 Following a jury trial, petitioner James Graninger was convicted of kidnapping, sexual assault, and aggravated assault. The trial court sentenced him to concurrent, fourteen-year prison terms for the kidnapping and sexual assault convictions and a consecutive, ten-year term for the aggravated assault. Although the jury had found Graninger guilty of

aggravated assault based on his use of a knife, it found the state had failed to prove an allegation of dangerousness that was also based on the use of a knife. On direct appeal, Graninger argued, among other things, that his conviction for aggravated assault should be reduced to simple assault because these verdicts were inconsistent and that the trial court erred by imposing a consecutive sentence on the aggravated assault conviction. This court rejected those and Graninger's other claims and affirmed his convictions and sentences on appeal. *State v. Graninger*, No. 2 CA-CR 92-0078 (memorandum decision filed Feb. 18, 1993).

¶2 Graninger again challenged the legality of his sentences in several documents that the trial court treated collectively as a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The court summarily dismissed the petition, finding Graninger's claims were precluded because they had either "been raised on appeal or were appropriate for appellate review and not raised." Graninger challenges that ruling in this petition for review. We will not disturb a trial court's ruling on a petition for post-conviction relief unless the court clearly abused its discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none.

¶3 To the extent we understand Graninger's arguments on review, he appears to contend that the sentencing court illegally aggravated his sentences based on its finding that he had used a weapon, which was inconsistent with the jury's verdict on the allegation of dangerousness, and that the court imposed an illegal consecutive sentence for aggravated assault. We agree with the trial court that these claims are precluded because they were either raisable or raised on direct appeal. We also note that the state attached to its response below

a “supplemental petition for post conviction relief,” apparently filed in a previous Rule 32 proceeding in 1995, in which Graninger argued these same issues. Rule 32.2(a)(1) and (2) provide that “[a] defendant shall be precluded from relief under this rule based upon any ground” that was “[r]aisable on direct appeal” or was “[f]inally adjudicated on the merits on appeal or in any previous collateral proceeding.” Graninger has not argued that any of the exceptions to preclusion identified in Rule 32.2(b) apply to this case. We find no abuse of discretion in the trial court’s determination that Graninger’s claims were precluded and its summary denial of post-conviction relief.

¶4 Further, to the extent Graninger has also attempted to raise a claim, based on *Blakely v. Washington*, 542 U.S. 296 (2004), that his Sixth Amendment right to a jury trial on aggravating factors was violated, that decision is inapplicable to cases such as Graninger’s that were final before the decision was rendered. *See State v. Febles*, 210 Ariz. 589, ¶ 7, 115 P.3d 629, 632 (App. 2005).

¶5 Although we grant review, we deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

PHILIP G. ESPINOSA, Judge