

**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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**JUNE -3 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0037-PR
	)	DEPARTMENT B
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
MARTIN GAVINO GUZMAN,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-51953

Honorable Deborah Ward, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Martin Gavino Guzman

Florence  
In Propria Persona

B R A M M E R, Judge.

¶1 Following a bench trial, Martin Guzman was convicted of two counts of molestation of a child, four counts of sexual conduct with a minor under fifteen, and one count of continuous sexual abuse of a child, all dangerous crimes against children. The trial

court sentenced him to consecutive twenty-eight- and seventeen-year terms of imprisonment for the molestation convictions and consecutive terms of imprisonment for life with no possibility of parole for thirty-five years for the remaining convictions. This court affirmed all but one of his convictions and sentences on appeal, *State v. Guzman*, No. 2 CA-CR 96-0418 (memorandum decision filed Dec. 4, 1997), and later denied relief on a petition for post-conviction relief Guzman had filed pursuant to Rule 32, Ariz. R. Crim. P. *State v. Guzman*, No. 2 CA-CR 99-0522-PR (memorandum decision filed May 18, 2000). In this petition for review, Guzman challenges the trial court’s summary denial of relief in a subsequent Rule 32 proceeding. We review the trial court’s ruling for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find none.

¶2 In his notice of post-conviction relief, which the trial court apparently treated as a petition for post-conviction relief, Guzman raised the following: his sentences were illegal, selective and vindictive prosecution, disclosure violations, and ineffective assistance of counsel. The trial court identified Guzman’s “primary claim” as one based upon the United States Supreme Court’s decision in *Blakely v. Washington*, 542 U.S. 296 (2004). It correctly denied relief on that claim, noting that *Blakely* is not retroactive and, therefore, does not apply to Guzman’s case, which became final years before *Blakely* was decided. *See State v. Febles*, 210 Ariz. 589, ¶ 17, 115 P.3d 629, 635 (App. 2005) (*Blakely* not retroactive and “only applies to cases not yet final when the opinion was issued”).

¶3 The trial court also correctly found Guzman’s remaining claims were precluded, noting that Guzman had raised them in a previous petition for post-conviction relief. Rule 32.2(a)(2) provides: “A defendant shall be precluded from relief under this rule based upon any ground . . . [f]inally adjudicated on the merits on appeal or in any previous collateral proceeding.” Guzman’s previous petition has not been provided to us with this petition for review, but he has not challenged on review the court’s determination that his current petition had reasserted his previous claims.

¶4 Guzman checked a box on the form notice of post-conviction relief indicating that his claims fell under Rule 32.1(d), (e), (f), (g), or (h), which are excepted from the rule of preclusion under Rule 32.2(b). But that rule also provides, if “a claim under Rules 32.1(d), (e), (f), (g) and (h) is to be raised in a successive or untimely post-conviction proceeding, the notice . . . must set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition or in a timely manner.” Ariz. R. Crim. P. 32.2(b). As the trial court stated, Guzman’s “notice [did] not set forth [the] substance of [a] specific exception for bringing further action” on his previously asserted claims. Rule 32.2(b) further provides that, “[i]f the specific exception and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner, the notice shall be summarily dismissed.” Therefore, the trial court did not abuse its discretion by doing so.

¶5 To the extent Guzman has attempted to raise issues on review that he did not present below, we do not address them here. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii). Although we grant review, we deny relief.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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GARYE L. VÁSQUEZ, Judge