

**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**  
**AUG 17 2009**  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	
	)	
Respondent,	)	2 CA-CR 2009-0106-PR
	)	DEPARTMENT A
	)	
v.	)	<u>MEMORANDUM DECISION</u>
	)	Not for Publication
BARRY CORNELL,	)	Rule 111, Rules of
	)	the Supreme Court
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-34097

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Barry M. Cornell

Florence  
In Propria Persona

ESPINOSA, Presiding Judge.

¶1 In this petition for review, petitioner Barry Cornell challenges the trial court’s March 2009 ruling on a motion for clarification. Cornell’s motion ostensibly sought

clarification of the court's denial of a pro se petition for writ of mandamus he had filed in February 2007 and apparently renewed or augmented in June 2008. Cornell sought the writ based on the trial court's alleged failure, some sixteen years ago, to hold a mandatory prehearing conference pursuant to Rule 16.4, Ariz. R. Crim. P., before Cornell's 1993 jury trial on multiple charges of child molestation and sexual conduct with three minors under the age of fourteen. We will not disturb the trial 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 The jury found Cornell guilty of five counts of sexual conduct with a minor under fourteen, one count of attempted sexual conduct with a minor under fourteen, and three counts of child molestation, all dangerous crimes against children.<sup>1</sup> The trial court sentenced him to one twenty-five-year prison term, two thirty-five-year terms, and six life sentences, all to be served consecutively. We affirmed the convictions and all but one of the sentences on appeal, remanding the case to the trial court for resentencing only on Cornell's conviction for attempted sexual conduct with a minor. *State v. Cornell*, No. 2 CA-CR 93-0385 (memorandum decision filed Jan. 23, 1996).

¶3 In 1996, with the assistance of appointed counsel, Cornell had filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., asserting ineffective assistance of trial counsel. The trial court held an evidentiary hearing in April 1997 before denying relief. After a lull between 1999 and 2006, Cornell resumed a pattern he had

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<sup>1</sup>The charge of attempted sexual conduct with a minor under fourteen was a preparatory dangerous crime against children in the second degree.

established in 1996 and 1997 of filing numerous pro se motions and other nonconforming documents in the trial court.

¶4 In February 2007, he filed a petition for writ of mandamus, seeking release on the grounds of his claimed innocence and the trial court's alleged failure to follow pretrial procedures dictated by Rule 16. In June 2008, the court had not yet ruled on the petition when Cornell filed a "Motion for Discharge or in the Alternative Demand for State's Answer to Petition for Writ of Mandamus and Demand for State's Prosecution of Felony Charges Filed Against Michael Millstone Pursuant to his Admissions via Tort in Arizona Department of Administration's Case Number G200620844." The state filed an opposition to the motion for discharge or petition for writ of mandamus, and after the parties argued the motion at a status conference in July 2008, the court denied Cornell's request for release in a minute entry ruling on July 10, 2008. Cornell then filed a "motion to vacate judgment," which the court summarily dismissed in August 2008. In March 2009, he filed a "motion for clarification" of the trial court's ruling, which is ostensibly, the subject of the present petition for review. The court's minute entry states:

This Court denied Defendant's Petition for Mandamus because Defendant alleged no proper basis for Mandamus Relief. Defendant's unfounded allegations of misconduct by the State do not constitute proof of wrongful imprisonment nor do they merit an Evidentiary Hearing. Defendant has extensively and unsuccessfully litigated the issues raised in his Petition for Mandamus Relief through both Direct and Collateral Appeal. A Petition for Mandamus is not a proper vehicle for Defendant to attempt to relitigate these issues or raise new issues that should have been raised in Defendant's Direct and Collateral Appeals.

Therefore, this Court denies Defendant's request for an Evidentiary Hearing and reaffirms its denial of Defendant's Petition for Mandamus.

¶5 Cornell filed the present petition for review on April 7, 2009. In it, he complains primarily of the court's denial of his February 2007 petition for writ of mandamus and of the court's alleged failure in 1993 to comply with Rule 16.4—an appealable issue that is now clearly precluded. Although he also makes assorted other generalized claims and accusations, he has not demonstrated that the court abused its discretion in finding he had “alleged no proper basis for Mandamus Relief” and therefore denying his assorted requests for relief.

¶6 Finding no abuse of the trial court's discretion, we grant the petition for review but deny relief.

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PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

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JOHN PELANDER, Judge

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JOSEPH W. HOWARD, Chief Judge