

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 2009-0204-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DONALD ALLEN GUADAGNI,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20054436

Honorable Hector E. Campoy, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Donald Allen Guadagni

Tucson
In Propria Persona

E S P I N O S A, Presiding Judge.

¶1 Following a jury trial, Donald Allen Guadagni was convicted of bigamy, and the trial court ordered him to pay restitution to his two victims. This court affirmed his conviction on appeal but vacated the restitution order. *State v. Guadagni*, 218 Ariz. 1, ¶¶ 20, 24, 178 P.3d 473, 479-80 (App. 2008). Guadagni was again ordered to pay restitution to his victims after further proceedings in the trial court, and we affirmed that order on appeal. *State v. Guadagni*, No. 2 CA-CR 2008-0314 (memorandum decision filed June 26, 2009). Guadagni then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., arguing the trial court had violated his Sixth Amendment right to cross-examine one of his victims. The trial court summarily denied relief, finding Guadagni’s claim precluded under Rule 32.2(a), and we denied relief on review. *See State v. Guadagni*, No. 2 CA-CR 2009-0117-PR (memorandum decision filed Sept. 16, 2009). He now challenges the trial court’s denial of relief on his second petition for post-conviction relief. We review the ruling for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Finding none, we deny relief.

¶2 Guadagni filed a document entitled “petition for writ of coram nobis” that the trial court treated as a successive petition for post-conviction relief. In it, he asserted the Pima County Attorney’s Office had “engaged in selective prosecution” and other prosecutorial misconduct during trial, his conviction was based on perjured testimony, and his trial and appellate counsel had been ineffective for failing to raise these issues previously. The trial court found, however, that Guadagni had failed to present “any cogent claims that

would entitle him to a hearing or to any relief.” It also found the claims were precluded and denied relief.

¶3 Any claim that could have been raised on direct appeal or in an earlier post-conviction proceeding is precluded, except for claims raised under Rule 32.2(b). Ariz. R. Crim. P. 32.2(a). Guadagni’s claims all could have been raised on direct appeal or in his previous petition for post-conviction relief, and none falls within the exceptions to preclusion in Rule 32.2(b). We therefore find no abuse of discretion in the trial court’s denial of relief and, although we grant review, we likewise deny relief.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

GARYE A. VÁSQUEZ, Judge