

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

MAR -4 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0466-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
KEVIN G. WILLIAMS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR61761

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Kevin G. Williams

Florence  
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Following a jury trial, petitioner Kevin Williams was convicted of four counts of sexual conduct with a minor under the age of fifteen. In 1999, the trial court sentenced Williams to consecutive, presumptive prison terms of twenty years on each count. We affirmed his convictions and sentences on appeal. *State v. Williams*, No. 2 CA-CR 99-0383 (memorandum decision filed Aug. 30, 2001). Williams subsequently sought post-conviction relief on two occasions pursuant to Rule 32, Ariz. R. Crim. P. We

denied relief on Williams's petitions for review of the court's denial of post-conviction relief in both instances. *State v. Williams*, Nos. 2 CA-CR 2007-0097-PR (memorandum decision filed Sept. 21, 2007), 2 CA-CR 2009-0354-PR (memorandum decision filed Mar. 17, 2010).

¶2 Williams again sought post-conviction relief in 2012, asserting his trial counsel had been ineffective, a claim he raised as one of newly discovered evidence. The trial court dismissed his petition and motion for rehearing without conducting an evidentiary hearing, and this petition for review and supplemental petition for review followed. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶3 Williams contends the trial court abused its discretion by finding his claim of ineffective assistance of trial counsel precluded and by rejecting it on the merits,<sup>1</sup> and generally asserts his constitutional rights were thus "abridge[d]." He contends that "[c]entral to [his] claim of Ineffective Assistance of Counsel is whether or not an actual Plea existed prior to or during trial," and he further asserts that "it cannot be said . . . the Petitioner enjoyed the services of effective Counsel throughout the remainder of the entire trial proceedings." He asks that we vacate his convictions and sentences or, at the very least, order an evidentiary hearing.

¶4 Williams raised claims of ineffective assistance of trial counsel in his first post-conviction petition and, albeit obliquely, in his second petition. He is therefore

---

<sup>1</sup>We do not address Williams's claim that the trial court improperly denied his petition for post-conviction relief before receiving his reply to the state's response to the petition. He did not raise this argument in his motion for rehearing. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider any issue on which trial court did not have opportunity to rule).

precluded from doing so now. *See* Ariz. R. Crim. P. 32.2(a)(2), (3) (precluding claims based on any ground “[f]inally adjudicated on the merits . . . in any previous collateral proceeding” or “waived . . . in any previous collateral proceeding”). Moreover, despite his assertion that his claim is based on newly discovered material facts pursuant to Rule 32.1(e), nothing in the petition for review establishes that Rule 32.2(a) is inapplicable to Williams’s petition filed below or that he should be excused from that rule’s preclusive effect pursuant to Rule 32.2(b).

¶5 Based on the record before us, we cannot say the trial court abused its discretion in denying Williams’s petition for post-conviction relief. We therefore grant the petition for review but deny relief.

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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

/s/ Michael Miller  
MICHAEL MILLER, Judge