

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 27 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0492-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOHN GEORGE PONSART JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200401314

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

John Ponsart

Florence
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Petitioner John Ponsart seeks review of the trial court's summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. Ponsart was convicted after pleading no contest to attempted molestation of a child and placed on lifetime probation. In 2008, the court revoked Ponsart's probation and sentenced him to an aggravated prison term of fifteen years. We affirmed Ponsart's

sentence on appeal. *State v. Ponsart*, 224 Ariz. 518, ¶ 16, 233 P.3d 631, 636 (App. 2010).

¶2 Ponsart then filed a notice of post-conviction relief, followed by a pro se petition in which he indicated, without further explanation, that he was entitled to relief based on “[t]he unconstitutional suppression of evidence by the state,” “[t]he unconstitutional use by the state of perjured testimony,” and “[v]iolation of the right not to be placed twice in jeopardy for the same offense.”¹ Ponsart also asserted, as “newly-discovered material” facts that would “require the court to vacate the conviction,” that years after he was convicted, the victim’s grandfather “was accused of the same thing and the victim’s mother had a restraining order [placed] against him in 2010.” Without specifying a ground for relief under Rule 32.1, Ponsart also claimed that “[p]olice reports state that [the] victim repeatedly change[d] her story.” He further asserted that his constitutional rights were violated because the trial court “held [his] past record against [him]” at sentencing and because he “was never booked in to Pinal County Jail” for his offense. He also appears to have argued the court lacked an evidentiary basis to aggravate his sentence.

¶3 The trial court denied relief and dismissed the proceedings in a detailed order addressing each of Ponsart’s claims, as well as a claim of perjured testimony he had raised in a previous Rule 32 proceeding that had been dismissed as premature. The court found Ponsart’s claims of unconstitutional suppression of evidence and violation of

¹These claims were indicated by check marks on a standard form.

double jeopardy principles unsupported and not colorable. The court also found Ponsart failed to support his claim that a probation officer had offered perjured testimony at the probation violation hearing, noting Ponsart had neither called witnesses to challenge the officer's testimony at the hearing nor attached affidavits to his petition for post-conviction relief.

¶4 Rejecting Ponsart's claim of newly discovered evidence raised pursuant to Rule 32.1(e), the trial court stated, "P[onsart]'s guilt or innocence is not affected by another individual's criminal activities involving the same victim." And the court concluded Ponsart's assertions about statements made in police reports, related to his original 2004 conviction, were precluded by his failure to file a timely petition for post-conviction relief after his original disposition.

¶5 With respect to Ponsart's claims of sentencing error, the trial court noted that we have already determined sufficient evidence supported its finding that the victim suffered physical or emotional harm, an aggravating factor "specifically enumerated by statute," and that the court "did not err in considering other aggravating factors or in imposing an aggravated sentence." *Ponsart*, 224 Ariz. 518, ¶¶ 14-15, 233 P.3d at 635; *see also* Ariz. R. Crim. P. 32.2(a)(2) (defendant precluded from relief based on any ground "[f]inally adjudicated on the merits on appeal"). This pro se petition for review followed.

¶6 In it, Ponsart restates his claims regarding statements in police reports about the victim's inconsistent allegations, alleged sentencing error by the trial court, and the

absence of a Pinal County Jail booking record.² He asks that we remand the case for resentencing.

¶7 We find no abuse of discretion in the trial court's denial of post-conviction relief. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of post-conviction relief reviewed for abuse of discretion). In its thorough ruling, the trial court clearly identified, addressed, and correctly resolved Ponsart's claims in a manner sufficient to permit this or any other court to conduct a meaningful review. Accordingly, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶8 Although we grant review, we 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

²Ponsart has waived appellate review of other issues decided by the trial court by failing to raise them in his petition for review. *See Ariz. R. Crim. P. 32.9(c)*.