

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

JUL -2 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0062-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
GREGORY ALLEN STANHOPE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR08635

Honorable James E. Marner, Judge

REVIEW GRANTED; RELIEF DENIED

Thomas C. Horne, Arizona Attorney General
By Paul E. Carter

Tucson
Attorneys for Respondent

Gregory Allen Stanhope

Florence
In Propria Persona

MILLER, Judge.

¶1 Gregory Stanhope petitions this court for review of the trial court’s summary denial of his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We grant review but deny relief.

¶2 Stanhope was convicted after a jury trial of two counts each of armed robbery, kidnapping, and aggravated assault and one count of first-degree burglary. He was sentenced to a combination of concurrent and consecutive aggravated prison terms totaling fifty-seven years’ imprisonment. We affirmed his convictions and sentences on appeal. *State v. Stanhope*, 139 Ariz. 88, 676 P.2d 1146 (App. 1984). We also denied relief on review of the trial court’s denial of post-conviction relief in what appears to be Stanhope’s sixth post-conviction proceeding. *State v. Stanhope*, No. 2 CA-CR 2006-0178-PR (memorandum decision filed Jan. 31, 2007).

¶3 In his most-recent petition for post-conviction relief, Stanhope claimed the Arizona Department of Corrections (ADOC) had erred in calculating his earned release credits based on 2002 amendments to the governing statutes and had improperly denied him a commutation hearing. The trial court summarily denied relief, concluding that Stanhope had not adequately supported his claims and “the evidence appears to demonstrate” he had been properly credited and that he was not yet eligible for a commutation hearing. This petition for review followed the court’s denial of Stanhope’s motion for rehearing.

¶4 On review, Stanhope repeats his claims and additionally argues the trial court erred in denying his claims without an evidentiary hearing. Although the court addressed the merits of Stanhope’s claims, we deny relief because they are not cognizable under Rule 32. *See State v. Olquin*, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007) (appellate court may affirm trial court ruling for any reason supported by record).

¶5 Stanhope characterized his claims as arising under Rule 32.1(d), which permits relief when the defendant “is being held in custody after the sentence imposed has expired.” But nothing in the record suggests, and Stanhope does not argue, that he would be entitled to release even if his claims had merit. Indeed, he requested as relief only that he be awarded twenty-one days of earned release credit and an additional 336 days of credit “for the time between when [he] applied for a commutation [hearing]” and when he began serving his next set of consecutive sentences. Challenges to the ADOC’s computation of credit “are not cognizable under Rule 32 unless they result in the defendant remaining in custody when he should otherwise be free.” *State v. Davis*, 148 Ariz. 62, 64, 712 P.2d 975, 977 (App. 1985). The denial of a commutation hearing is similarly not cognizable under Rule 32. Although Stanhope characterizes his commutation claim as constitutionally based, Rule 32.1 permits constitutional claims only to the extent a defendant’s conviction or sentence violates the constitution. Ariz. R. Crim. P. 32.1(a). It does not include a claim based on an alleged constitutional violation occurring during a defendant’s incarceration. *See Davis*, 148 Ariz. at 64, 712 P.2d at 977.

¶6

For the reasons stated, although review is granted, relief is denied.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.