

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

MAY 22 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0064-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
EVA LYNN MAYFIELD,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20021963002

Honorable Paul E. Tang, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Eva Lynn Mayfield

Goodyear  
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Petitioner Eva Mayfield seeks review of the trial court’s order denying her petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “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). Mayfield has not sustained her burden of establishing such abuse here.

¶2 After a jury trial on two consolidated causes, Mayfield was convicted of first-degree murder, burglary, three counts of aggravated assault, and four counts of kidnapping. The trial court imposed presumptive, concurrent and consecutive prison terms totaling natural life plus forty-two years. This court affirmed her convictions and sentences on appeal. *State v. Mayfield*, No. 2 CA-CR 2004-0297 (memorandum decision filed Nov. 14, 2005). Mayfield petitioned for and was denied certiorari by our supreme court, and our mandate issued on July 21, 2006.

¶3 Mayfield filed a timely notice of post-conviction relief in 2006, and counsel filed a notice stating he could find no “meritorious and non-frivolous issues which might constitute a colorable claim under Rule 32.1.” Counsel also requested an extension of time for Mayfield to file a pro se petition if she so desired. The court granted the motion, giving Mayfield sixty days to file such a petition. When no petition was filed, the court dismissed the Rule 32 proceeding.

¶4 In 2011 Mayfield filed a second Rule 32 notice, citing newly discovered evidence as the ground for relief, based on an alleged witness who had not been “available at the time of trial” but who was now “incarcerated and . . . available.” In her

petition for review filed by appointed counsel, however, Mayfield asserted ineffective assistance of trial counsel, based on counsel's failure to object to the consolidation of the two causes at trial. In September 2012, the trial court summarily denied the petition, concluding Mayfield's claim of ineffective assistance of counsel was precluded and rejecting her claim of newly discovered evidence.

¶5 Three months later, in December 2012, Mayfield filed another notice of post-conviction relief, relying on *Martinez v. Ryan*, \_\_\_ U.S. \_\_\_, 132 S.Ct. 1309, 1315 (2012). She asserted counsel in her second Rule 32 proceeding had been ineffective in failing to develop the newly discovered evidence claim mentioned in her notice, counsel in her first Rule 32 proceeding had been ineffective in not raising the claim of ineffective assistance of trial counsel argued by counsel in the second proceeding, and *Martinez* entitled her to relief. The trial court summarily dismissed this notice as well, concluding *Martinez* did not allow Mayfield to raise a claim of ineffective assistance of Rule 32 counsel.

¶6 On review, Mayfield again asserts that *Martinez* entitles her to relief and asks this court to instruct the trial court that she was entitled to effective assistance in her Rule 32 proceeding. *Martinez* does not, however, support Mayfield's position. In *Martinez*, the Supreme Court determined:

Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral

proceeding, there was no counsel or counsel in that proceeding was ineffective.

*Id.* at \_\_\_\_, 132 S.Ct. at 1320. But the Court did not ground its decision in a constitutional right, instead determining that defendants had an “equitable” right to the effective assistance of initial post-conviction counsel, and it limited its decision to the application of procedural default in federal habeas review. *Id.* at \_\_\_\_, 132 S.Ct. at 1315, 1319–20. Indeed, the Court expressly stated it was not deciding the question of whether a defendant is entitled to effective assistance of counsel in the first collateral proceeding in which the defendant may assert a claim of ineffective assistance of trial counsel. *Id.* at \_\_\_\_, 132 S.Ct. at 1315.

¶7 Arizona courts, however, consistently have stated that, for non-pleading defendants like Mayfield, there is no constitutional right to counsel in post-conviction proceedings and, thus, despite the existence of state rules providing counsel, a claim that Rule 32 counsel was ineffective is not a cognizable ground for relief in a subsequent Rule 32 proceeding. *See State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996); *State v. Krum*, 183 Ariz. 288, 291-92 & n.5, 903 P.2d 596, 599-600 & n.5 (1995); *Osterkamp v. Browning*, 226 Ariz. 485, ¶ 18, 250 P.3d 551, 556 (App. 2011); *State v. Armstrong*, 176 Ariz. 470, 474-75, 862 P.2d 230, 234-35 (App. 1993) (*overruled on other grounds by State v. Terrazas*, 187 Ariz. 387, 390, 930 P.2d 464, 467 (App. 1996)). Nothing in *Martinez* alters this established law, and the trial court did not err in

summarily denying Mayfield's successive petition for post-conviction relief. Therefore, although we grant the petition for review, we deny relief.

*/s/ Peter J. Eckerstrom*

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

*/s/ Joseph W. Howard*

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JOSEPH W. HOWARD, Chief Judge

*/s/ Michael Miller*

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MICHAEL MILLER, Judge