

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

AUG 21 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                       |   |                            |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, | ) | 2 CA-CR 2013-0154-PR       |
|                       | ) | DEPARTMENT A               |
| Respondent,           | ) |                            |
|                       | ) | <u>MEMORANDUM DECISION</u> |
| v.                    | ) | Not for Publication        |
|                       | ) | Rule 111, Rules of         |
| JOHN PIERRE BAKER,    | ) | the Supreme Court          |
|                       | ) |                            |
| Petitioner.           | ) |                            |
| _____                 | ) |                            |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR57359002

Honorable Casey F. McGinley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

John P. Baker

Buckeye  
In Propria Persona

H O W A R D, Chief Judge.

¶1 After a jury trial, petitioner John Baker was convicted of conspiracy to commit child abuse, ten counts of child abuse, and two counts of kidnapping a minor under the age of fifteen. This court affirmed Baker's convictions and the prison terms imposed, which totaled 86.5 years. *State v. Baker*, No. 2 CA-CR 99-0222 (memorandum decision filed Sept. 14, 2000). Thereafter, he repeatedly has sought post-conviction relief

pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> In this petition for review, Baker challenges the trial court's April 3, 2013 order denying his March 2013 "Motion for Declaratory Judgement," purportedly brought pursuant to A.R.S. § 12-1841, in which he sought a judicial determination that former A.R.S. § 13-604.01, now numbered as A.R.S. § 13-705(M), 2008 Ariz. Sess. Laws, ch. 301, §§ 17, 29; 2006 Ariz. Sess. Laws, ch. 295, § 2, and A.R.S. § 13-1304, are unconstitutional as applied in this case. We review a trial court's summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶2 In his motion, Baker contended application of § 13-604.01 in this case resulted in the imposition of consecutive prison terms so lengthy that the punishment was cruel and unusual and violated the Eighth Amendment. With respect to § 13-1304, the kidnapping statute, he asserted he could not be found guilty of violating it because the victim was his child and a person cannot be guilty of kidnapping his own child; he asserted he was the victim's legal guardian and therefore he had the legal authority to take her with him. Baker further asserted that because the two statutes were unconstitutional, his "convictions and sentences must be overturned."

¶3 The trial court began its April 3, 2013 minute entry order by stating it would regard the motion as a notice of post-conviction relief. Noting this was Baker's

---

<sup>1</sup>Baker has sought review of the trial court's rulings denying relief in those proceedings and we have sustained those rulings. *See State v. Baker*, No. 2 CA-CR 2008-0012-PR (memorandum decision filed Sept. 18, 2008); *State v. Baker*, Nos. 2 CA-CR 2005-0366-PR, 2 CA-CR 2006-0088-PR (consolidated) (memorandum decision filed Jan. 25, 2007); *State v. Baker*, No. 2 CA-CR 2006-0428-PR (memorandum decision filed Feb. 28, 2007). Another petition for review of the court's denial of relief in June 2013 is pending before this court. *State v. Baker*, No. 2 CA-CR 2013-0278.

“fifth attempt at obtaining post-conviction relief,” the court observed Baker was precluded from raising claims that were raisable on appeal or in any prior collateral proceeding. And, the court added, he could only raise claims excepted from the preclusive effect of Rule 32.2, which means only claims brought pursuant to Rule 32.1(d), (e), (f), (g) or (h). Ariz. R. Crim. P. 32.2(b). The court further observed Baker was not only required to identify the preclusion-excepted subsection of the rule under which his claims fell, he was obligated to specify why he had not raised the claim in prior proceedings. *See id.* The court found Baker had established neither and dismissed the notice, denying relief summarily.

¶4 In his petition for review, Baker contends the trial court erred by treating his motion for declaratory judgment as a notice of post-conviction relief. He argues he could not raise these claims under Rule 32 because the rule does not permit a defendant to challenge the constitutionality of a statute, insisting such claims must be brought in a declaratory action pursuant to § 12-1841. Baker is mistaken. The claims were potentially cognizable under the rule and the court did not err by construing the motion accordingly. *See, e.g.,* Ariz. R. Crim. P. 32.1(a) (providing as ground for petition that conviction or sentence violates state or federal constitutions); *State v. Stefanovich*, 232 Ariz. 154, ¶¶ 6-7, 302 P.3d 679, 680-81 (App. 2013) (addressing constitutionality of applying change in recidivist statute for offense of driving under influence of intoxicant); *State v. Helmer*, 203 Ariz. 309, ¶¶ 1-2, 7 & n.1, 53 P.3d 1153, 1153-54 & n.1 (App. 2002) (challenging whether application of sex offender registration statute as applied to defendant violated ex post facto prohibition).

¶5 Baker was not simply seeking declaratory relief, he was asserting yet another ground for reversing his convictions and vacating his sentences based on the argument that two statutes were unconstitutional when applied to him. As the trial court correctly found, these claims were raisable on appeal and potentially cognizable under the rule, but as the trial court also correctly found, Baker was precluded from asserting them in this successive proceeding. *See* Ariz. R. Crim. P. 32.1(a); *Stefanovich*, 232 Ariz. 154, ¶¶ 6-7, 302 P.3d at 680-81; *Helmer*, 203 Ariz. 309, ¶¶ 1-2, 7 & n.1, 53 P.3d at 1153-54 & n.1. Given the nature of these claims, the court did not err by treating his motion as a notice of post-conviction relief. Thus, Baker has failed to sustain his burden on review of establishing the court abused its discretion in summarily rejecting his latest claims. Accordingly, we grant Baker’s petition for review but deny relief.

*/s/ Joseph W. Howard*  
\_\_\_\_\_  
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

*/s/ Garye L. Vásquez*  
\_\_\_\_\_  
GARYE L. VÁSQUEZ, Presiding Judge

*/s/ Michael Miller*  
\_\_\_\_\_  
MICHAEL MILLER, Judge