

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ARVINE M. HARDWICK,  
*Petitioner.*

No. 2 CA-CR 2013-0456-PR  
Filed January 15, 2014

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Maricopa County

No. CR1993092114

The Honorable Hugh Hegyi, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Arthur Hazelton, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

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Arvine Hardwick, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Arvine Hardwick seeks review of the trial court's order denying his 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). Hardwick has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Hardwick was convicted of eight counts of molestation of a child, three counts of sexual conduct with a minor, four counts of public sexual indecency, and sexual abuse. The convictions and sentences were reversed on appeal, and Hardwick was granted a new trial. *State v. Hardwick*, 183 Ariz. 649, 905 P.2d 1384 (App. 1995). After a second trial, Hardwick was convicted of six counts of molestation of a child, three counts of sexual conduct with a minor, two counts of public sexual indecency, and sexual abuse. The trial court imposed consecutive prison terms totaling 181 years' imprisonment. The convictions and sentences were affirmed as modified on appeal.<sup>1</sup> *State v. Hardwick*, No. 1 CA-CR 96-0685 (memorandum decision filed June 19, 1997).

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<sup>1</sup>Hardwick's sentences were affirmed as modified because this court modified Hardwick's presentence incarceration credit on one of the counts.

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¶3 Hardwick thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was “unable to find any claims for relief to raise in post-conviction proceedings.” Counsel requested an extension of time in which Hardwick could file a pro se supplemental petition, and the trial court granted that motion. Hardwick did not file a supplemental petition, and the court dismissed the proceeding.

¶4 In June 2011, Hardwick filed a combined notice of and petition for post-conviction relief. The trial court summarily denied relief in October 2011, concluding most of Hardwick’s claims were precluded and he had not established a claim of newly discovered evidence.

¶5 In April 2012, Hardwick initiated a third post-conviction relief proceeding, arguing in his notice and petition that (1) his constitutional rights had been violated, (2) the trial court had lacked jurisdiction to convict or sentence him, (3) he had received ineffective assistance of counsel, and (4) newly discovered evidence showed his innocence of the offenses. The trial court summarily denied relief.

¶6 On review, Hardwick makes various claims about the merits of his alibi defense and his innocence of the charged offenses. But, with the exception of his claim of newly discovered evidence, Hardwick’s claims are precluded either because they were not raised in his previous proceedings or were litigated therein. *See* Ariz. R. Crim. P. 32.2(a)(2), (3).

¶7 In relation to his newly discovered evidence claim, Hardwick states that the marriage license application he appeared to have presented as newly discovered evidence below was “never intended for new evidence.”<sup>2</sup> Indeed, in his petition for post-

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<sup>2</sup>In its response to Hardwick’s petition for post-conviction relief, the state pointed out that the license was the only evidence on which Hardwick relied that had not been presented at trial.

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conviction relief Hardwick listed as “[n]ewly-discovered material” only “Prima Facie Evidence” and various constitutional provisions, federal statutes, and legal standards. But, a claim under Rule 32.1(e) must rest on newly discovered material *facts*, not on newly discovered or newly conceived legal theories for relief. Thus, to the extent Hardwick seeks relief under Rule 32.1(e) based on new legal theories of which he was previously unaware, we cannot say the trial court abused its discretion in denying relief.

¶8 Likewise, we cannot say the trial court abused its discretion in rejecting the marriage license application as newly discovered evidence, as it apparently did in denying relief. As the state pointed out in its response to Hardwick’s petition for post-conviction relief, which the court deemed correct, Hardwick certainly would have known of the existence of the license at the time of trial. He therefore could have obtained it with due diligence, and it does not constitute newly discovered evidence within the meaning of Rule 32.1(e). *See* Ariz. R. Crim. P. 32.1(e)(2).

¶9 To the extent Hardwick’s arguments below and on review constitute a claim that he is actually innocent under Rule 32.1(h), we cannot say Hardwick has established such a claim by clear and convincing evidence. Most of the evidence on which Hardwick relies was presented at trial, and the jury found him guilty of the offenses. In the absence of any additional facts “sufficient to establish that no reasonable fact-finder would have found [him] guilty of the . . . offense[s] beyond a reasonable doubt,” *see* Ariz. R. Crim. P. 32.1(h), we cannot say the court abused its discretion in denying relief.

¶10 For all these reasons, although the petition for review is granted, relief is denied.