

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ALEXANDER ISIAH MCKELVEY,
Petitioner.

No. 2 CA-CR 2013-0504-PR
Filed March 13, 2014

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Maricopa County

No. CR1999006637

The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Alexander Isiah McKelvey, Douglas
In Propria Persona

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MEMORANDUM DECISION

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

H O W A R D, Chief Judge:

¶1 Alexander McKelvey petitions this court for review of the trial court's order summarily dismissing 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). McKelvey has not met his burden of demonstrating such abuse here.

¶2 McKelvey was convicted after a jury trial of second-degree murder, aggravated assault, and discharging a firearm at a residential structure and was sentenced to concurrent and consecutive, aggravated prison terms totaling thirty-seven years. We affirmed his convictions and sentences on appeal. *State v. McKelvey*, 1 CA-CR 01-0130 (memorandum decision filed Jan. 15, 2002).

¶3 Following his first petition for post-conviction relief, McKelvey was granted a new trial on the basis of ineffective assistance of counsel. He then pled guilty to the same charges and received the same sentences. McKelvey sought post-conviction relief and was granted sentencing relief pursuant to *Blakely v. Washington*, 542 U.S. 296 (2004). At a subsequent jury trial on aggravating factors, the jury found two factors for each of McKelvey's offenses. The trial court then sentenced McKelvey to aggravated, consecutive and concurrent sentences totaling 26 years.

¶4 Following his resentencing, McKelvey again sought post-conviction relief, asserting his trial counsel had coerced him into entering the plea and that his resentencing counsel had been

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ineffective for failing to object to the aggravated-factors trial on double jeopardy grounds. The trial court summarily dismissed that petition and we denied review of the court's decision.

¶5 McKelvey initiated this post-conviction proceeding in July 2012, asserting in his petition that the trial court had erred in weighing aggravating and mitigating factors at his resentencing because it imposed a presumptive sentence on one count but aggravated sentences on the others, and that he would "be held in custody after the sentence unlawfully imposed has expired" because the court improperly imposed consecutive sentences. The trial court summarily dismissed McKelvey's petition, determining that he had not been sentenced to a presumptive term for any offense and that his claim regarding consecutive sentences is precluded.

¶6 On review, McKelvey repeats his claims and asserts they are not subject to preclusion because "under the due process clauses of the state and federal constitutions, an illegal sentence can always be challenged." He develops no argument in support of this proposition, further asserting only that "numerous clarifications" of sentencing law after *Blakely* would have benefitted him, constituting significant changes in the law pursuant to Rule 32.1(g). He further asserts, as we understand his argument, that the law in effect at the time of his offenses required a lesser sentence be imposed because it required that mitigating factors "must be considered."

¶7 Because he cites no relevant case law and does not develop the argument in any meaningful way, we do not address McKelvey's contention that his claims are not subject to preclusion based on "due process." See *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to develop legal argument waives argument on review). For the same reason, we do not address his claim that the trial court did not apply the sentencing statutes in effect at the time of his offenses and that his sentence would somehow be different had the court done so. Moreover, he has

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identified no change in the law relevant to his sentences.¹ *See* Ariz. R. Crim. P. 32.1(g); 32.2(b). McKelvey has not provided any basis for us to conclude the trial court abused its discretion in summarily dismissing his claims.

¶8 Although review is granted, relief is denied.

¹To the extent McKelvey attempts to incorporate by reference the arguments made in his petition below, that procedure is not permitted by our rules. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv).