IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DONALD GENE BARTON,
Petitioner.

No. 2 CA-CR 2013-0570-PR
Filed April 28, 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NOT FOR PUBLICATION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 Cochise County
No. CR201100896
The Honorable John F. Kelliher Jr., Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Donald Gene Barton, Florence
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

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

¶2 Barton pled guilty to sexual exploitation of a minor under the age of fifteen and attempted sexual exploitation of a minor under the age of fifteen, based on his possession of child pornography. The trial court designated the offenses as dangerous crimes against children pursuant to A.R.S. § 13-705 and sentenced Barton to a twenty-year prison term on the first count to be followed by lifetime probation on the second.

¶3 Barton filed a notice of post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no "tenable issue to submit . . . pursuant to Ariz. R. Crim. P. 32." Barton then filed a pro se petition raising various claims, including that the trial court was not permitted to sentence him pursuant to § 13-705 because he did not commit the offenses "against a minor" as required by § 13-705(P)(1), and because a different trial judge—in two other cause numbers involving other defendants—had determined that possession of child pornography was not a dangerous crime against children. The trial court dismissed the petition, and Barton did not seek review of the trial court's ruling.

¶4 Shortly thereafter, Barton filed a second petition for post-conviction relief raising the same arguments and additionally claiming the state was required to "produce the minor child to confront the accused" to comply with the Sixth Amendment to the United States Constitution. The trial court summarily denied relief, and this petition for review followed the court's denial of Barton's motion for reconsideration.

¶5 Barton summarily repeats his claims on review. But Barton's claims are precluded because he either raised them or could have raised them in his first post-conviction proceeding. Ariz. R. Crim. P. 32.2(a)(2), (3). And, although Barton noted on the cover page of his petition below that he was raising a claim of newly discovered evidence pursuant to Rule 32.1(e), a claim not necessarily subject to preclusion, *see* Ariz. R. Crim. P. 32.2(b), he has not articulated any argument that falls within that provision. Thus, the trial court did not err in summarily rejecting his petition for post-conviction relief.

¶6 Although we grant review, we deny relief.