

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LEONARD L. MANNING,
Petitioner.

No. 2 CA-CR 2014-0032-PR
Filed June 9, 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NOT FOR PUBLICATION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 Pima County

No. CR20013335

The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Leonard L. Manning, Florence
In Propria Persona

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MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Following a jury trial, petitioner Leonard Manning was convicted of kidnapping a minor, second-degree child molestation, and aggravated assault of a minor. The trial court sentenced him to aggravated, consecutive prison terms totaling 52.25 years. We affirmed Manning’s convictions and sentences on appeal, *State v. Manning*, No. 2 CA-CR 2002-0453 (memorandum decision filed Jan. 13, 2004), and denied relief on his petition for review of the court’s denial of his first petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., *State v. Manning*, No. 2 CA-CR 2006-0219-PR (memorandum decision filed Dec. 12, 2006).

¶2 Manning filed his first two petitions for writ of habeas corpus in 2004 and 2011; the trial court denied relief on the claims raised in both of those petitions. Manning filed a third petition for writ of habeas corpus in 2013, which the court treated as a petition for post-conviction relief. He now seeks review of the court’s denial of that petition.¹ “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). We find no such abuse here.

¶3 The trial court summarized the issues Manning had raised in his pro se petition for writ of habeas corpus as follows:

¹Manning filed a notice of appeal from the trial court’s ruling. This court entered an order informing him he had failed to file a petition for review in compliance with Rule 32.9, Ariz. R. Crim. P., and gave him additional time to file a proper petition, which he did.

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1) [T]he police unlawfully subjected him to a warrantless arrest for an alleged failure to provide notice regarding a change of address, 2) the State failed to institute charges by filing a complaint and showing a magistrate that it had probable cause to hold [Manning] for trial, 3) the State failed to prove the “elemental facts” required by § 13-3821(A)(18), 4) per se prejudice negatively affected the outcome of the trial, 5) the State’s evidence was premised on a 4th Amendment violation, 6) prosecutorial misconduct denied Manning a fair trial, 7) a *Brady*² violation concealed exculpatory evidence, and 8) Manning’s counsel was ineffective.

On review, Manning essentially raises the same arguments that he raised in his petition below, although he suggests, apparently for the first time on review, that because many of his arguments are based on “new evidence,” they establish a “‘gateway’ excusing [Manning’s] procedural default on the issues now presented.”

¶4 In its minute entry denying Manning’s petition, the trial court identified and addressed the claims he had raised, and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded the claims raised either were precluded or waived pursuant to Rules 32.1 and 32.2. No purpose would be served by restating the court’s ruling in its entirety here. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Rather, we adopt that portion of the court’s ruling finding Manning’s claims precluded or waived.

²*Brady v. Maryland*, 373 U.S. 83 (1963).

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¶5 To the extent Manning suggests for the first time on review that some of his claims are based on “new evidence,” thereby excepting them from preclusion, we do not address them. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (amendments or additions to petitions must be made prior to trial court’s ruling). In addition, we note that in the same minute entry in which the trial court addressed the request for post-conviction relief, the court also ruled on Manning’s “Motion Requesting a Final Disposition on an Untried Indictment.” However, because this claim is not cognizable under Rule 32, and because the matter before us is a petition for review of the court’s denial of post-conviction relief pursuant to Rule 32, to the extent Manning challenges that portion of the court’s ruling, we do not address it.³

¶6 Because Manning has not sustained his burden on review of establishing the trial court abused its discretion in denying his petition for writ of habeas corpus, we grant the petition for review but deny relief.

³We note, in any event, that the trial court dismissed the challenged count with prejudice.