

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROBERT LAMONT BROWN,
Petitioner.

No. 2 CA-CR 2014-0323-PR
Filed December 19, 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NOT FOR PUBLICATION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. CR20111490001

The Honorable Paul E. Tang, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Robert L. Brown, Tucson
In Propria Persona

STATE v. BROWN
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Robert Brown seeks review of the trial court's order denying his "Supplement Brief to Petition of Review," which the court treated as a 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. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Brown has not met his burden of demonstrating such abuse here.

¶2 Brown pled guilty to armed robbery and robbery and was sentenced to consecutive prison terms totaling 13.75 years. He sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise in post-conviction proceedings. Counsel then filed a "supplemental brief" on Brown's behalf, claiming that his plea was not knowing, intelligent, and voluntary because he was not competent to plead guilty, and that his trial counsel was ineffective for failing to seek an independent evaluation of his competence after the trial court refused his request for an evaluation pursuant to Rule 11, Ariz. R. Crim. P.¹ The trial court summarily denied relief.

¶3 Brown then sought, and received, numerous extensions of time in which to file a petition for review pursuant to Rule 32.9(c). He ultimately filed in the trial court a document he titled

¹In its order rejecting Brown's motion for a competency evaluation, the court stated it would "only proceed if the Public Defender's Office is willing to pay for a preliminary examination pursuant to Rule 11.2(c)."

STATE v. BROWN
Decision of the Court

“Supplement Brief to Petition of Review,” in which he again claimed he was not competent to plead guilty, the court “lacked the jurisdiction to allow an incompetent defendant to sign a plea,” and his plea agreement was therefore “void.” He also repeated his claim of ineffective assistance of counsel. The trial court, treating Brown’s “Petition of Review” as a petition for post-conviction relief, summarily dismissed it, finding his claims precluded.²

¶4 On review, Brown argues his claims are not precluded because they involve a right of sufficient constitutional magnitude to require personal waiver, citing *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002). Brown is correct that, pursuant to *Stewart*, certain claims may be raised in a successive post-conviction proceeding without being subject to preclusion on waiver grounds pursuant to Rule 32.2(a)(3). See *Stewart*, 202 Ariz. 446, ¶ 12, 46 P.3d at 1071. But *Stewart* has no application here. Brown’s claims are not precluded on waiver grounds pursuant to Rule 32.2(a)(3), they are precluded pursuant to Rule 32.2(a)(2) because they were finally adjudicated in his first post-conviction proceeding.

¶5 Although we grant review, we deny relief.

² Approximately five months after filing his “Petition of Review,” Brown filed yet another motion requesting permission to file a delayed petition for review. The trial court denied the motion, stating it was “moot” “because a Petition was filed.” Brown does not argue on review that the trial court erred in denying that motion.