

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

DONALD GENE BARTON,  
*Petitioner.*

No. 2 CA-CR 2015-0137-PR  
Filed June 25, 2015

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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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

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Petition for Review from the Superior Court in Cochise County

No. CR201100896

The Honorable John F. Kelliher Jr., Judge

**REVIEW GRANTED; RELIEF DENIED**

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Donald Gene Barton, Florence  
*In Propria Persona*

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**MEMORANDUM DECISION**

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

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ESPINOSA, Judge:

¶1 Petitioner Donald Barton 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). Barton has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Barton was convicted of 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, both dangerous crimes against children. The trial court sentenced him to a twenty-year prison term on the first count, followed by lifetime probation on the second. Barton subsequently sought and was denied post-conviction relief. He was denied relief in a second proceeding shortly thereafter, and this court granted review, but denied relief on his petition for review. *State v. Barton*, No. 2 CA-CR 2013-0570-PR (memorandum decision filed Apr. 28, 2014).

¶3 In December 2014, Barton filed a motion "to dismiss the allegation of dangerous crimes against children," citing Rule 32.1(e)(1) and (g). He contended, as he did in his last proceeding, that his crimes are not properly designated dangerous crimes against children. The trial court summarily denied the motion as well as Barton's subsequent motion for rehearing.

¶4 On review, Barton repeats his claims and argues the trial court erred in summarily denying them. We disagree.

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Although Barton asserts that his claims were made pursuant to Rule 32.1(e) and (g), he presents no new evidence and has not established a significant change in the law entitling him to relief. Many of his citations in support of his argument refer to decisions by superior court judges, and as far as we are able to determine, most of these decisions were entered before his last post-conviction proceeding. The one superior court decision that Barton contends was entered after the date of his last petition for post-conviction relief involved a plea agreement made by the state during the course of a Rule 32 proceeding, which is not the case here. And, in any event, superior court decisions do not bind appellate courts. *See State v. Shrum*, 220 Ariz. 115, ¶ 21, 203 P.3d 1175, 1180 (2009).

¶5 In sum, Barton has failed to establish a non-precluded claim based on newly discovered evidence, or a significant change in the law. Because his claims either were or could have been litigated in his previous proceedings, they are untimely and precluded. *See* Ariz. R. Crim. P. 32.1(a), 32.2(a)(2),(3), 32.4(a).

¶6 Therefore, although the petition for review is granted, relief is denied.