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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ALEXANDRA PALMA, Petitioner.	2 CA-CR 2006-0243-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-60140

Honorable Virginia C. Kelly, Judge

REVIEW GRANTED; RELIEF DENIED

Alexandra Palma — Goodyear
In Propria Persona

B R A M M E R, Judge.

¶1 Petitioner Alexandra Palma seeks review of the trial court's summary dismissal of her notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. We review for an abuse of discretion a trial court's summary disposition of a post-conviction notice. *See* Ariz. R. Crim. P. 32.2(b) (for successive post-conviction notice to withstand summary dismissal, defendant must cite applicable subsection of Rule 32.1 and state reasons for not previously raising claim); *State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150

(App. 2001) (trial court's post-conviction rulings reviewed for abuse of discretion). We find no abuse of discretion in this case.

¶2 Palma was convicted of manslaughter in 1999 and was sentenced to a partially aggravated prison term of sixteen years. This court affirmed her conviction and sentence on appeal and denied relief on her subsequent petition for review in her first post-conviction proceeding. *State v. Palma*, No. 2 CA-CR 99-0302 (memorandum decision filed Feb. 8, 2001); *State v. Palma*, No. 2 CA-CR 2002-0184-PR (memorandum decision filed Mar. 21, 2003).

¶3 In her form notice, filed in May 2006, Palma checked boxes indicating she was claiming a significant change in the law based on *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531 (2004), and newly discovered evidence based on the trial judge's having sealed questions from jurors without discussing them with the parties. In the pages Palma attached to that notice, however, she apparently also alleged claims that trial counsel had been ineffective, that he had a conflict of interest, and that the trial judge had failed to investigate counsel's conflict of interest. Palma did not explain why she had not previously raised any of the claims.

¶4 The trial court correctly pointed out that *Blakely* does not apply to Palma's case because her conviction became final after the mandate was issued on her appeal in April 2001, more than three years before *Blakeley* was decided. *See State v. Febles*, 210 Ariz. 589, ¶ 1, 115 P.3d 629, 631 (App. 2005). Accordingly, Palma is incorrect that the trial court did not address her *Blakely* claim and that "time" is irrelevant to her *Blakely* claim.

¶5 In addition, the court found Palma could not establish that her claimed newly discovered evidence would have changed the jury's verdict, a required element of such a claim. *See* Ariz. R. Crim. P. 32.1(e) (for newly discovered evidence claim, defendant must show, inter alia, evidence "probably would have changed" verdict or sentence). The claim was based on the juror questions about Palma's codefendant's statement to police officers. But we had concluded in Palma's first post-conviction proceeding that this statement was inadmissible. The court did not abuse its discretion in finding she could not state a viable claim on this ground.

¶6 Finally, although the trial court did not expressly address Palma's attempt to state claims of ineffective assistance of counsel, it did not abuse its discretion in summarily dismissing her post-conviction notice. Those claims are not listed among the exceptions to preclusion in Rule 32.2(b). Moreover, because Palma raised claims of ineffective assistance of counsel in her first post-conviction proceeding, any additional claims of ineffective assistance are expressly precluded. *See State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002); *State v. Connor*, 163 Ariz. 97, 100, 786 P.2d 948, 951 (1990).

¶7 Therefore, we grant review but deny relief.

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J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

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PETER J. ECKERSTROM, Presiding Judge

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PHILIP G. ESPINOSA, Judge