

APPENDIX A

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROBERT CARRASCO GAMEZ,
Petitioner.

No. 2 CA-CR 2021-0071-PR
Filed December 1, 2021

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20031552

The Honorable Brenden J. Griffin, Judge

REVIEW GRANTED; RELIEF DENIED

Roberto Carrasco Gamez, Florence
In Propria Persona

STATE v. GAMEZ
Decision of the Court

MEMORANDUM DECISION

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

ST A R I N G, Vice Chief Judge:

¶1 Robert Gamez seeks review of the trial court's ruling summarily dismissing his successive notice of post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P. We will not disturb that order unless the court abused its discretion. See *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Gamez has not shown such abuse here.

¶2 Gamez pled guilty to aggravated assault, kidnapping, promoting prison contraband, destruction of or injury to a public jail, attempted first-degree escape, dangerous or deadly assault by a prisoner, and four counts of aggravated assault of a corrections officer. The trial court sentenced Gamez to concurrent prison terms, the longest of which is thirty-five years. Gamez has sought and been denied post-conviction relief numerous times.

¶3 In his latest notice, filed in June 2021, Gamez indicated he was raising claims of ineffective assistance of trial and post-conviction counsel and several constitutional claims, including that he had been required to wear a stun belt during court hearings, that the trial court erred by denying his motion seeking new counsel, and that the prosecutor committed misconduct. The court summarily dismissed the notice, finding the claims precluded because it had already "addressed (and denied)" them. The court further noted Gamez was not entitled to the effective assistance of counsel in successive post-conviction proceedings. This petition for review followed.

¶4 On review, Gamez argues the trial court erred by summarily dismissing his notice, asserting as he did below that his claims are not subject to preclusion because they are of sufficient constitutional magnitude to require a knowing, voluntary, and intelligent waiver. Typically, claims like Gamez's are waived when a defendant attempts to raise them in a

STATE v. GAMEZ
Decision of the Court

successive proceeding.¹ See Ariz. R. Crim. P. 33.2(a)(3). However, the rule exempts from preclusion claims raising “a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.” *Id.* But, even if Gamez’s claims implicated such rights, he has raised the same or similar claims in previous proceedings without success, and the claims are therefore subject to preclusion under Rule 33.2(a)(2). And, to the extent his most-recent claims are distinct from his previous claims, he has not explained why any of his new claims could not have been raised sooner. Rule 33.4(b)(3)(D) provides for summary dismissal when the defendant does not “adequately explain[] why the failure to timely file a notice was not the defendant’s fault.” See Ariz. R. Crim. P. 33.4(b)(3)(A). Thus, the court did not err in summarily dismissing Gamez’s most recent notice of post-conviction relief.

¶5 We grant review but deny relief.

¹Gamez appears to have abandoned his claim of newly discovered evidence.

APPENDIX B

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. BRENDEN J GRIFFIN

CASE NO. CR20031552

DATE: July 14, 2021

STATE OF ARIZONA

Plaintiff,

vs.

ROBERT CARRASCO GAMEZ

Defendant.

ORDER

IN CHAMBERS RE RULE 33 PCR NOTICE (SUMMARILY DENIED)

On July 8, 2021, Defendant filed what appears to be his fifth Notice Requesting Post-Conviction Relief (the "PCR Notice"). He repeats the arguments he made in those previous filings. Namely, that his trial attorney and separate first PCR attorney were ineffective. *See, e.g.*, Rulings dated August 7, 2012 and March 21, 2013. Because the Court has previously addressed (and denied) these arguments, Defendant is precluded from raising them again. Rule 33.2(a)(2), Ariz. R. Crim. P. ("A defendant is precluded from relief under Rule 33.1(a) based on any ground: . . . finally adjudicated on the merits in any previous post-conviction proceeding ...").

If Defendant is claiming that he is entitled to effective assistance of counsel in his successive PCR proceedings beyond his first one, then he is mistaken. *See State v. Pruett*, 185 Ariz. 128, 130–31, 912 P.2d 1357, 1359–60 (App. 1995) (right to effective assistance of counsel only extends to first petition for post-conviction relief of right); Rule 33.4(b)(3)(C), Ariz. R. Crim. P. ("A defendant may raise a claim of ineffective assistance of Rule 33 counsel in a successive Rule 33 proceeding if the defendant files a notice no later than 30 days after the trial court's final order in the first post-conviction proceeding, or, if the defendant seeks appellate review of that order, no later than 30 days after the appellate court issues its mandate in that proceeding.").

Accordingly, IT IS ORDERED that Defendant's PCR Notice is denied.


HON. BRENDEN J. GRIFFIN
(ID: ff488f53-96ea-4969-9cae-55e88a3e9f08)

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A. S.
Judicial Administrative Assistant

ORDER

Page 2

Date: July 14, 2021

Case No.: CR20031552

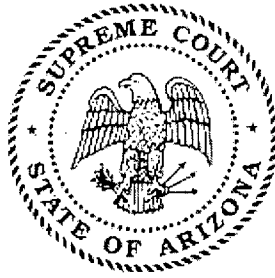
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Attorney General - Victim Notification
County Attorney
County Attorney - Victim Notification

A. S.

Judicial Administrative Assistant

APPENDIX C



Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
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TRACIE K. LINDEMAN
Clerk of the Court

July 14, 2022

RE: STATE OF ARIZONA v ROBERT CARRASCO GAMEZ
Arizona Supreme Court No. CR-21-0399-PR
Court of Appeals, Division Two No. 2 CA-CR 21-0071 PRPC
Pima County Superior Court No. CR20031552

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on July 14, 2022, in regard to the above-referenced cause:

ORDERED: Petition for Review Pursuant to Ariz. R. Crim.P Rule 31.19(A) and 32.9(g) = DENIED.

A panel composed of Vice Chief Justice Timmer, Justice Lopez, Justice Beene and Justice King participated in the determination of this matter.

Tracie K. Lindeman, Clerk

TO:
Linley Wilson
Myles A Braccio
Robert Carrasco Gamez, ADOC 131401, Arizona State Prison,
Florence - Eyman Complex-SMU #1 Unit
Beth Capin Beckmann
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