

No. 22A285

IN THE
SUPREME COURT OF THE UNITED STATES

DESEAN ALEXANDER BRUCE -- PETITIONER
VS.
STATE OF ARIZONA -- RESPONDENT

On Petition for Writ of Certiorari to
The Supreme Court of the United State

APPENDICES TO THE PETITION FOR WRIT OF CERTIORARI

APPENDIX A

DENIAL OF PETITION FOR REVIEW BY THE ARIZONA SUPREME COURT



FILED

JUL 26 2022

COURT OF APPEALS
DIVISION TWO

Supreme Court

STATE OF ARIZONA

ROBERT BRUTINEL
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

TRACIE K. LINDEMAN
Clerk of the Court

July 26, 2022

RE: STATE OF ARIZONA v DESEAN ALEXANDER BRUCE
Arizona Supreme Court No. CR-21-0386-PR
Court of Appeals, Division Two No. 2 CA-CR 21-0081 PRPC
Pima County Superior Court No. CR059352-002

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on July 26, 2022, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

Tracie K. Lindeman, Clerk

TO:

Linley Wilson
Myles A Braccio
Harold L Higgins Jr
Beth C Beckmann
ar

APPENDIX B

**DENIAL OF PETITION FOR REVIEW BY THE
ARIZONA COURT OF APPEALS, DIVISION TWO**

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DESEAN ALEXANDER BRUCE,
Petitioner.

No. 2 CA-CR 2021-0081-PR
Filed December 8, 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NOT FOR PUBLICATION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. CR059352002
The Honorable Javier Chon-Lopez, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Harold L. Higgins PC, Tucson
By Harold L. Higgins
Counsel for Petitioner

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MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

¶1 DeSean Bruce seeks review of the trial court's ruling summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, 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). Bruce has not shown such abuse here.

¶2 After a jury trial, Bruce was convicted of first-degree murder, five counts of armed robbery, and two counts of attempted armed robbery. The trial court sentenced him to a natural life term for murder with concurrent prison terms for the other offenses. We affirmed his convictions and sentences on appeal. *State v. Bruce*, No. 2 CA-CR 2001-0148 (Ariz. App. July 23, 2002) (mem. decision). Bruce sought post-conviction relief, which the trial court denied, and we denied relief on review. *State v. Bruce*, No. 2 CA-CR 2006-0272-PR (Ariz. App. Feb. 28, 2007) (mem. decision).

¶3 In March 2020, Bruce filed a petition for post-conviction relief asserting a claim under Rule 32.1(h) that no reasonable jury could find him guilty beyond a reasonable doubt and a claim under Rule 32.1(c) that his sentences were "unduly harsh" and "illegal." The state moved to dismiss the petition, arguing Bruce had not complied with Rule 32.2(b) by providing "sufficient reasons" for "not raising the claim in a previous notice or petition" or "in a timely manner."

¶4 The trial court ordered Bruce to further address "why his successive petition for post-conviction relief is not subject to summary dismissal pursuant to Rule 32.2(b)," "provide legal authority as to why [Bruce] is not precluded from claiming ineffective assistance of counsel," and "identify any non-precluded facts" entitling him to an evidentiary hearing. After Bruce filed a memorandum addressing those issues and the state filed a response, the trial court summarily dismissed the proceeding. It determined that Bruce had not identified "sufficient reasons" for failing to raise his Rule 32.1(c) and (h) claims in his first petition, that his sentencing

STATE v. BRUCE
Decision of the Court

claim did not fall under Rule 32.1(c), and that any claims of ineffective assistance were precluded. This petition for review followed.

¶5 On review, Bruce restates his claims but, acknowledging the trial court did not reach the merits of those claims, argues the court erred in dismissing them based on Rule 32.2(b). That section of his petition for review, copied from his filing below, largely seeks to distinguish his case from this court's decision in *State v. Leeman*, 250 Ariz. 251 (App. 2020). But that case had been vacated by our supreme court well before Bruce filed this petition for review. *State v. Leeman*, No. CR-20-0436-PR (Ariz. July 30, 2021) (unreported disposition). Accordingly, we do not consider that portion of Bruce's petition.

¶6 Below, Bruce characterized his claims as falling under Rule 32.1(c) and (h). Such claims must be raised "within a reasonable time after" the defendant has "discover[ed] the basis of the claim." Ariz. R. Crim. P. 32.4(b)(3)(B). And, although such claims are not subject to preclusion on waiver grounds under Rule 32.2(a)(3), a defendant must nonetheless "explain the reasons for not raising the claim in a previous notice or petition, or for not raising the claim in a timely manner." Ariz. R. Crim. P. 32.2(b). If a defendant does not provide "sufficient reasons" why a claim had not been raised previously, a trial court may summarily dismiss the proceeding. *Id.*

¶7 Bruce asserts "the reason his successive petition was not filed earlier was that previous counsel had not explored the idea of relying on Rule 32.1(h) and had apparently not considered it."¹ But, even disregarding Bruce's attempt to lay the blame on previous counsel, the delay in this case is remarkable—Bruce's current counsel acknowledges he has represented him since 2013 and was aware of what he believed to be a meritorious Rule 32.1(h) claim in 2017. And he was aware in early 2018 that the Pima County Attorney's Office Conviction Integrity Unit would not grant relief. Bruce does not explain why it took him another two years to file the successive petition—particularly given that Bruce's application to the panel included a detailed description of his Rule 32.1(h) claim.

¶8 In any event, we cannot agree with Bruce that previous counsel's failure to raise a claim, standing alone, is a "sufficient reason[]" to

¹Bruce has not attempted to explain his delay in seeking relief under Rule 32.1(c).

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allow a delayed claim under Rule 32.2(b).² Bruce's proposed interpretation would render meaningless the requirement that a defendant explain the reasons for a late filing—the requirement would always be met and no explanation would be necessary. "We will not interpret statutes or rules in a manner that renders portions of their text superfluous." *Brenda D. v. Dep't of Child Safety*, 243 Ariz. 437, ¶ 20 (2018).

¶9 We grant review but deny relief.

²Because Bruce does not squarely raise the argument, we do not address whether the ineffective assistance of previous post-conviction counsel could constitute a sufficient reason to allow a claim under Rule 32.1(b) through (h) in a successive petition. *See* Ariz. R. Crim. P. 32.2(b).

APPENDIX C

DISMISSAL OF SUCCESSIVE PETITION FOR POST- CONVICTION RELIEF BY PIMA COUNTY SUPERIOR COURT

ARIZONA SUPERIOR COURT, PIMA COUNTY

HON. JAVIER CHON-LOPEZ

CASE NO. CR059352-002

DATE: June 28, 2021

STATE OF ARIZONA

Plaintiff,

vs.

DESEAN ALEXANDER BRUCE
Defendant.

R U L I N G

IN CHAMBERS:

The Court has before it Petitioner Desean Bruce's Rule 32 Petition for Post-Conviction Relief. Petitioner raises two claims in his Rule 32 petition pursuant to Rule 32.1(h) and Rule 32.1(c). Although not explicitly raised, Petitioner also makes several mentions of ineffective assistance of counsel. Such claims would arise under Rule 32.1(a).

I. Did Petitioner provide sufficient reasons for failing to raise 32.1(h) claims in his previous Rule 32 petition?

Rule 32.1(h) requires a petitioner "to demonstrate by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would find the defendant guilty of the offense beyond a reasonable doubt." But because this is Petitioner's second Rule 32 petition,¹ the Court will not address the merits of his 32.1(h) claim unless Petitioner "explain(s) the reasons for not raising the claim in a previous notice or petition." Ariz. R. Crim. P. 32.2(b). Further, "if the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition . . . the court may summarily dismiss the notice." *Id.*

The Court has discretion in determining whether a reason is sufficient under Rule 32.2(b). *See State v. Speers*, 238 Ariz. 423, 427, ¶ 10 (App. 2015). At minimum, however, the "sufficient reason" standard requires the petitioner to do more than simply provide a reason. *See State v. Leeman*, 250 Ariz. 251, ¶ 15 (App. 2020) (finding the argument that previous counsel merely failed to identify and raise a claim, without more, is insufficient under Rule 32.2(b)). This interpretation of "sufficient reason" is consistent with Arizona case law because "each word [in the statute] must be given meaning so that no part will be void, inert, redundant, or trivial." *Deer Valley Unified Sch. Dist. No. 97 v. Houser*, 214 Ariz. 293, 296, ¶ 8 (2007). Otherwise, the word "sufficient" would be rendered meaningless. *Leeman*, 250 Ariz. at 250, ¶ 15.

¹ Petitioner's first Rule 32 petition was summarily dismissed on July 5, 2006.

Michele Nelms

Judicial Administrative Assistant

RULING

Page 2

Date: June 28, 2021

Case No.: CR059352-002

Here, similar to the reason given in *Leeman*, Petitioner argues that “no previous counsel considered the totality of the circumstances in this case.” Bruce Pet. 48:2-3. Therefore, the Court finds the Petitioner’s reason is insufficient under the Rule 32.2(b) because it is vague and offers no real explanation for why Petitioner failed to raise the claim in his first petition. Accordingly, this claim must be summarily dismissed.

II. Did Petitioner provide sufficient reasons for failing to raise 32.1(c) claims in his previous Rule 32 petition?

Petitioner also argues that he should be re-sentenced because his original sentence was “unduly harsh” and “illegal.” Bruce Pet. 1:22. However, he points to no legal authority to justify that relief. Thus, Petitioner’s only avenue for relief for this claim falls under Rule 32.1(c): “the sentence as imposed is not authorized by law.” Rule 32.2(b) precludes this claim because Petitioner offers no reason as to why he failed to raise this issue in his first petition. Therefore, this claim must be summarily dismissed.

III. Are any potential ineffective assistance of counsel claims precluded?

Although never fully articulated in his petition, Petitioner alludes to ineffective assistance of counsel claims against trial counsel, appellate counsel, and prior Rule 32 counsel. However, an ineffectiveness claim against prior Rule 32 counsel is not cognizable because the Sixth Amendment right to counsel does not apply to Rule 32 proceedings. *State v. Escareno-Meraz*, 232 Ariz. 586, 587 (App. 2013). Petitioner even concedes that such a claim would be precluded. Bruce Pet. 42:5-6.

The remaining claims against trial and appellate counsel would fall under Rule 32.1(a), which states: “the defendant's conviction was obtained, or the sentence was imposed, in violation of the United States or Arizona constitutions.” Unlike Rule 32.1(b)-(h) claims, Rule 32.1(a) claims are governed by preclusion rules listed in Rule 32.2(a). Rule 32.2(a)(3) states the petitioner “is precluded from relief under Rule 32.1(a) based on any ground . . . waived at . . . any previous post-conviction proceeding, except when the claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant.” A court may infer waiver in two scenarios: (1) when a petitioner fails to raise an issue after being advised by the sentencing judge of the necessity of doing so; or (2) the petitioner’s failure to raise any ground available in a previous Rule 32 proceeding when Petitioner was represented by counsel. *State v. Mata*, 185 Ariz. 319, 335 (1996).

Here, both scenarios are present. Petitioner executed a certification indicating he understood that he was required to include *in his first petition every ground for relief known to him* and which had not been raised previously. Further, Petitioner was represented by counsel in his prior Rule 32 proceeding. Each of these facts support the inference that Petitioner knowingly waived the right to ineffective assistance of counsel claims against trial and appellate counsel. Thus, the Court finds these claims are precluded under Rule 32.2(a).

Michele Nelms

Judicial Administrative Assistant

R U L I N G

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Date: June 28, 2021

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CONCLUSION

The Court finds that Petitioner has failed to provide "sufficient reasons" why he failed to bring his current claims in his first petition. Further, he provided no reasons at all for his Rule 32.1(c) claim.

IT IS THEREFORE ORDERED that Petitioner's Rule 32 Petition is summarily dismissed pursuant to Rule 32.11(a).

Javier Chon - López

HON. JAVIER CHON-LÓPEZ

(ID: b11bc3c1-4608-4e84-9a12-589e63c9aae8)

cc: Branden Kartchner, Esq.
Harold L Higgins Jr, Esq.
Case Management Services - Criminal
Clerk of Court - Criminal Unit

Michele Nelms
Judicial Administrative Assistant

APPENDIX D

DOCUMENTS AND EXHIBITS REFERENCED IN THE PETITION FOR WRIT OF CERTIORARI

1. Sentencing minute entry
2. Phillips 911 call
3. Phillips interview
4. Phillips second interview
5. Transcript, suppression hearing
6. Fillipeili reports
7. Tucson Police Department G.O.P.

8. Discrepancies in eyewitness statements
9. Benjamin statement
10. Alibi witness statements
11. Peasley disbarment
12. Peak motion to dismiss
13. Missing reports documents
14. Affidavit of Petitioner
15. List of untruthful officer
16. Grand jury transcripts
17. Misstatements of detectives
18. Dennison statement
19. Supplementary memorandum

ONE

HJD
PATRICIA A. NOLAND
CLERK, SUPERIOR COURT

2-27-01

By: Linda McCormick

SUPERIOR COURT OF ARIZONA

[Patricia A. Noland.]

PIMA COUNTY

TUCSON, AZ

15 February 26, 2001
Div Date

Hon. Michael Alfred
Judge

Linda McCormick
Deputy

NO. CR-59352

STATE OF ARIZONA

Kenneth Peasley

VS

DESEAN ALEXANDER BRUCE

Brick P. Storts, III and Wanda K. Day

DATE OF BIRTH: 3/10/73

SENTENCE OF IMPRISONMENT

The State is represented by the above named deputy county attorney; the defendant is present with counsel named above.

COURT REPORTER: Helene Diehl

The Court states that it conferred with counsel in chambers just prior to today's hearing and all agree that the sentencing ranges for Counts One through Seven as listed in the presentence report are not correct and they are hereby corrected as follows: for Counts One, Two, Three, Four and Five, dangerous, nonrepetitive offenses, the sentencing ranges are corrected to reflect a minimum sentence of 7 years, a presumptive sentence of 10.5 years and a maximum sentence of 21 years; as to Counts Six and Seven, dangerous, nonrepetitive offenses, the sentencing ranges are corrected to reflect a minimum sentence of 5 years, a presumptive sentence of 7.5 years and a maximum sentence of 15 years. Counsel agree that these are the correct ranges

15 February 26, 2001
Div Date

Hon. Michael Alfred
Judge

Linda McCormick
Deputy

NO. **C R - 5 9 3 5 2**

STATE VS. DESEAN ALEXANDER BRUCE

The defendant is advised of the charges and the determination of guilt. The Court states it has read and considered the presentence report, attachments thereto, memorandum submitted by counsel and letters submitted and discussed the matter with the probation officer. All parties are given the opportunity to speak. Mr. Storts advises that he received documentation from the Court which had been prepared by the defendant dealing, in part, with a supplement to a motion for new trial. He states that the Court did not accept these, and the motion for new trial was denied on February 22, 2001. He states that he gave a copy of the denial to the defendant and has provided the documents the defendant submitted pro se to the clerk, the same being filed in court this date. Ms. Day, the defendant, and Mr. Peasley address the Court as well as Catherine Lopez. Mr. Peasley reads a letter to the Court from Sylvia Coley, mother of the deceased; the letter will be made a part of the record and included with the letters packet filed in court this date. Mr. Storts addresses the Court further.

Pursuant to A.R.S. Section 13-607, the Court finds as follows:

JURY VERDICT The determination of guilt was based upon a verdict of guilty after a jury trial.

Having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following judgment and sentence:

IT IS THE JUDGMENT of the Court that the defendant is guilty of the following crimes, that upon due consideration of all the facts, law and circumstances relevant here, the Court finds that suspension of sentence and a term of probation are not appropriate and that a sentence of imprisonment with the Department of Corrections is appropriate.

AS PUNISHMENT, IT IS ORDERED that the defendant is sentenced to a term of imprisonment and is committed to the Arizona Department of Corrections as follows:

15 February 26, 2001
Div Date

Hon. Michael Alfred
Judge

Linda McCormick
Deputy

NO. C R - 5 9 3 5 2

STATE VS. DESEAN ALEXANDER BRUCE

OFFENSE:	Counts One, Two, Three, Four and Five, Armed Robbery
FELONY CLASS:	Two, Dangerous Pursuant to A.R.S. 13-604, Nonrepetitive
IN VIOLATION OF A.R.S. SECTIONS:	13-1902; 13-604
DATE OF OFFENSE:	November 8, 1997
SENTENCE:	21 years as to each count followed by the mandatory period of community supervision upon release Aggravated
TERM IMPOSED:	
CIRCUMSTANCES:	The Court finds as aggravating circumstances the defendant's prior criminal record, use of a deadly weapon in commission of the offenses and the presence of accomplices.

These sentences are to date from February 26, 2001, and the defendant is to be given credit
for 579 days served prior to sentencing for each count.

The sentences imposed for Counts One, Two, Three, Four and five shall be served
concurrently with each other.

15 February 26, 2001
Div Date

Hon. Michael Alfred
Judge

Linda McCormick
Deputy

NO. CR-59352

STATE VS. DESEAN ALEXANDER BRUCE

OFFENSE: Counts Six and Seven, Attempted Armed Robbery
FELONY CLASS: Three, Dangerous Pursuant to A.R.S. 13-604,
IN VIOLATION OF A.R.S. SECTIONS: Nonrepetitive
DATE OF OFFENSE: 13-1001; 13-1902; 13-604
SENTENCE: November 8, 1997
TERM IMPOSED: 15 years as to each count followed by the mandatory
CIRCUMSTANCES: period of community supervision upon release
Aggravated
The Court finds the same aggravating circumstances
as set forth above.

These sentences are to date from February 26, 2001, and the defendant is to be given credit for 579 days served prior to sentencing for each count.

The sentences imposed for Counts Six and Seven shall be served concurrently with each other and concurrently with the sentences imposed for Counts One, Two, Three Four and Five of this cause number.

15 February 26, 2001
Div Date

Hon. Michael Alfred
Judge

Linda McCormick
Deputy

NO. CR-59352

STATE VS. DESEAN ALEXANDER BRUCE

OFFENSE: Count Eight, First Degree Murder
FELONY CLASS: One
IN VIOLATION OF A.R.S. SECTIONS: 13-1105; 13-703
DATE OF OFFENSE: November 8, 1997
SENTENCE: Natural Life

This sentence is to date from February 26, 2001, and the defendant is to be given credit for 579 days served prior to sentencing.

The sentence imposed for Count Eight shall be served concurrently with the sentences imposed for Counts One through Seven of this cause number.

15 February 26, 2001
Div Date

Hon. Michael Alfred
Judge

Linda McCormick
Deputy

NO. C R - 5 9 3 5 2

STATE VS. DESEAN ALEXANDER BRUCE

The Court states that the appeal is automatic for the conviction for Count Eight and will be filed as to all eight counts. Mr. Storts states that the defense will file the notice of appeal.

IT IS FURTHER ORDERED authorizing the Sheriff of Pima County to deliver the defendant to the custody of the Arizona Department of Corrections and authorizing the Department of Corrections to carry out the term of imprisonment set forth herein.

IT IS FURTHER ORDERED that the Clerk of the Court shall remit to the Department of Corrections a copy of this order together with all pre-sentencing reports, probation violation reports, medical and psychological reports relating to the defendant and involving this cause.

Let the record reflect that the defendant's fingerprint is permanently affixed to the signature page of this sentencing order in open Court.

Written notice of the defendant's rights of appeal is provided to him.

FILED IN COURT: Order of Confinement, Pre-Sentence Report, Rights of Review.

Michael Alfred
HON. MICHAEL ALFRED

cc: Hon. Michael Alfred
Criminal Calendaring
Deputy County Attorney Kenneth Peasley - 2 + Victim Notification Unit
Brick P. Storts, III, Esq. - Barton & Storts
Wanda Day, Esq.
Adult Probation Dept. - 1 certified + 1 copy
Clerk of Court - Accounting
Clerk of Court - Appeals
Sheriff - 3 certified
DOC - 1 certified



TWO

BARTON & STORTS
271 North Stone Avenue
Tucson, Arizona 85701
(520) 882-2802
Brick P. Storts, III
Pima County Computer No. 55508
Arizona State Bar No. 004507
Attorney for Defendant, DESEAN BRUCE

FILED IN COURT

11-16-00

PATRICIA A. NOLAND Clerk

McCormick
Deputy

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

THE STATE OF ARIZONA,) No.: CR-59352

Plaintiff,) **STIPULATION**

v.)

DESEAN BRUCE,)

Defendant.) Assigned to Judge Alfred

COMES NOW the defendant, DESEAN BRUCE, by and through his attorney BRICK P. STORTS, III, and the State of Arizona, by and through Deputy County Attorney, KENNETH PEASLEY, and hereby stipulate to the following:

When Aaron Phillips spoke to the dispatcher during the 9-1-1 call in the early morning hours on November 8, 1997, he was asked the following question and gave the following answer:

Q (Dispatcher): Okay. And do you know the guy that shot him?

A (Aaron Phillips): Uhm...no I don't know him.

M-E

DATED this 16 day of November, 2000

AS9352

BARTON & STORTS


Brick P. Storts, III
Attorney for Defendant Bruce

BARBARA LaWALL
PIMA COUNTY ATTORNEY


Kenneth Peasley
Deputy County Attorney

**Additional material
from this filing is
available in the
Clerk's Office.**