

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

DESEAN ALEXANDER BRUCE -- PETITIONER

VS.

STATE OF ARIZONA -- RESPONDENT

MOTION TO EXTEND TIME TO FILE PETITION

FOR WRIT OF CERTIORARI

Petitioner DESEAN ALEXANDER BRUCE requests an extension of sixty days in which to file his petition for writ of certiorari from the current due date of October 25, 2022. Petitioner seeks relief from the July 25, 2022, order of the Supreme Court of Arizona denying his petition for review, attached to this motion.

The reasons for this request and the nature of the underlying claim are set forth below.

REASONS FOR REQUESTED EXTENSION

Petitioner is currently incarcerated at the Arizona State Prison, Lewis, Bachman Unit, Buckeye, Arizona. Petitioner had been previously housed for some time at the Arizona State Prison, Tucson. At that location, petitioner had accumulated most of the documents and information which would be necessary to prepare this petition for writ. On or about July 15, 2022, petitioner was moved from the Tucson prison to the Buckeye prison. He had time to gather his personal items, to include his accumulated case paperwork. They were collected on July 12. It is usual Department of Corrections' procedure for an inmate's personal property to be gathered and sent to his new location. When petitioner arrived at Lewis prison, none of his personal items or case materials were brought to him. Over time some of those materials have been recovered, but much of the material needed to prepare this writ is still missing. Petitioner was advised it had been inadvertently destroyed. No further explanation has been given. Petitioner has sought relief from this circumstance through a grievance procedure and any other means possible. To this date only a portion of the items needed for this petition have been recovered. At his new location petitioner is totally isolated with no easy access to anything. He gets no visits, e-mail once a day, and one phone call a week.

Previous counsel sent notice of the Supreme Court denial, which petitioner did not receive for some time due to the move. It was unclear to petitioner at that time what his next procedural

step should be. He ultimately determined that filing for writ of certiorari to this court would be an appropriate next step. In so doing, he learned of the 90 day filing limit. The efforts of his family in locating and retaining counsel to file the petition for writ were fruitless. Prior counsel who handled the state proceedings had been retained solely for those state proceedings, and was unable to represent petitioner in this matter. The result of these circumstances is that petitioner, who lacks any legal training and has had no experience with a proceeding such as he intends to file with this court, must represent himself. This would be of substantial difficulty for that reason alone. The problem is compounded by the loss of case paperwork, which petitioner is seeking to remedy through his family.

PETITIONER'S CLAIM.

The claim which led to the denial in the Arizona Supreme Court was based on a dismissal of petitioner's successive petition for post-conviction relief. The case involved a 2001 conviction for first degree murder. An unsuccessful appeal and unsuccessful post-conviction action followed in normal course, finally denied in 2007. Thereafter a petition for writ of habeas corpus was filed and denied in 2011

In 2020 petitioner filed his successive petition for post-conviction relief, premised on Rule 32.1.h, Arizona Rules of Criminal Procedure. That rule provides that, if under all circumstances in the case a jury could not find petitioner guilty, he would be eligible for post-conviction relief. Rule 32.1.h is one of the few exceptions to the general rules of preclusion which apply

when a defendant has had an appeal and a prior post-conviction proceeding. Petitioner contended that due to the circumstances in his case, all substantial evidence against him was the result of ineffective assistance of counsel (denial of constitutional right to counsel), or evidence which was not properly argued or decided by the trial court. Those prior court incorrect rulings resulted in the admission of evidence illegally obtained (e.g., by tainted, prejudicial identification procedures), or clear inappropriate conduct by police and the prosecutor.

Rule 32.1.h does not delineate what evidence should or should not be considered. Petitioner took the position that evidence improperly admitted by the court; evidence which was admitted or ignored due to the ineffective assistance of counsel; and the trial misconduct of the state, should all be subtracted from the evidence upon which the conviction was obtained. When that subtraction was made, the remaining evidence was clearly insufficient to substantiate a guilty verdict.

Neither the prosecution, the trial court, nor the appellate courts addressed petitioner's arguments on their merits. The prosecution contended that the successive petition for post-conviction relief was untimely filed, without addressing the merits of the petition. Petitioner raised substantial arguments to refute that claim, among them that the appellate, post-conviction and habeas corpus attorneys had never mentioned the possibility of a Rule 32.1.h argument. Appellate counsel was court appointed. Post-conviction and habeas counsel was retained. It was not until different counsel was retained for the successive petition for post-conviction that the 32.1.h argument was first considered. Several

cogent reasons were advanced for the “delay” in filing the 32.1.h petition, if in fact it was a delay. The rule in question, Rule 32.2, does not even specify what constitutes a delay, nor what factors would excuse the timing.

The trial court dismissed the petition on the “delay” issue. The court’s order only briefly addressed part of the issues raised by petition, specifically noting petitioner was relying on ineffective assistance of counsel, which was precluded. This mirrored the argument of the prosecutor. This argument begs the question raised by petitioner, which specifically acknowledged that it was relying in matters which had been, or could have been previously raised, as noted above.

The bottom line of these prior proceedings is neither the prosecution nor the courts have addressed the issues raised by petitioner, instead relying on a vague provision of delay. Petitioner is entitled to have his issues addressed on their merits in this first degree murder proceeding. In this regard he has been denied his constitutional right to due process. He was also denied his constitutional right to effective assistance of counsel, to have a fair trial, and to not have to defend against evidence gained in violation of his constitutional rights regarding the collection of identifications. These federal rights have been denied petitioner, who at this point seeks to have the argument considered that there is insufficient valid evidence to convict him.

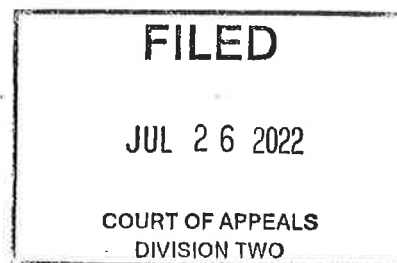
Petitioner desires to raise viable issues and to have sufficient time to prepare to present those issues.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 12 day of SEPTEMBER, 2022

DESEAN A. BRUCE

Desean Alexander Bruce



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

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.

ECKERSTROM, 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

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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).

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PROOF OF SERVICE

I, DESEAN ALEXANDER BRUCE, do swear or declare that on this date, SEPTEMBER 12, 2022, as required by Supreme Court Rule 29, I have served the enclosed MOTION TO PROCEED IN FORMA PAUPERIS and MOTION TO EXTEND TIME TO FILE PETITION FOR WRIT OF CERTIORARI, on each party in the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first class postage prepaid.

The names and addresses of those served are as follows:

Linley Wilson

Arizona Attorney General

2005 North Central Avenue

Phoenix, AZ 85004-2926

Myles A. Bracchio

Pima County Attorney

32 North Stone Avenue

Tucson, AZ 85701

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 12 day of SEPTEMBER, 2022

DESEAN BRUCE

Desean Alexander Bruce

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