

No. ____

In The
Supreme Court of the United States

JEREMY DOUGLASS,

Petitioner,

v.

STATE OF ARIZONA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
ARIZONA SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI
Brief for Petitioner

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QUESTION PRESENTED

Petitioner's defense attorney passed away following an overdose of illegal drugs. In Petitioner's first petition for post-conviction relief, he argued he received ineffective assistance of counsel due to acts and omissions of the defense attorney. Subsequently, Petitioner discovered evidence of the defense attorney's substance abuse during his case and filed a successive notice for post-conviction relief. The Arizona courts dismissed the notice and did not permit Petitioner to file a petition for post-conviction relief because they found it was a successive claim of ineffective assistance of counsel under Arizona law.

Whether evidence of a defense attorney's impairment due to substance abuse discovered after the first petition for post-conviction relief was decided is precluded as a successive notice of post-conviction relief as an ineffective assistance of counsel argument under the Sixth Amendment or constitutes newly discovered evidence and is a violation of a defendant's right to counsel under the Sixth Amendment.

PARTIES TO THE PROCEEDING

All petitioners and respondents are listed in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jeremy Petitioner respectfully petitions for a writ of certiorari to review the judgment of the Arizona Supreme Court, entered in the above-entitled proceeding on November 8, 2023.

OPINIONS BELOW

The order of the Supreme Court of Arizona, CR-23-0118-PR (Pet. App. 1a) is unreported. The memorandum decision of the Arizona Court of Appeals, No. 1 CA-CR 22-0531 PRPC (Pet. App. 2a) is unreported but can be found at 2012 WL 3553118. The motion for reconsideration order of the Maricopa County Superior Court, CR2009-030272-001, (Pet. App. 4a) is unreported. The Maricopa County Superior Court's order (Pet. App. 5a) is unreported.

STATEMENT OF JURISDICTION

The Arizona Supreme Court denied Petitioner post-conviction relief on November 8, 2023. (Pet. App. 1(a)). This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment to the United States Constitution

“No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property,

without due process of law...." U.S. Const. amend. XIV, § 1.

*Sixth Amendment to the United States
Constitution*

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

U.S. Const. amend. XI.

STATEMENT OF THE CASE

The State of Arizona charged Petitioner with thirty counts of Surreptitious Photographing, Videotaping, Filming or Digitally Recording, Class Five felonies; eight counts of Sexual Assault, Class Two felonies; seven counts of Sexual Abuse, Class Five felonies; eleven counts of Burglary in the Third Degree, Class Four felonies; and one count of Attempted Surreptitious Photographing, Videotaping, Filming or Digitally Recording, a Class Six felony.

Petitioner exercised his right to a jury trial on the indictment and, after considering the evidence and testimony, the jury returned guilty verdicts. The Maricopa County Superior Court

sentenced Stanford to a total term of imprisonment of 152.5 years.

Following his direct appeal, Petitioner challenged his conviction under Arizona post-conviction proceedings by filing a petition for post-conviction relief. Petitioner argued that his defense counsel provided ineffective assistance of counsel when his trial counsel failed to perform essential tasks related to his defense, such as the following:

- Failed to file a motion to sever sexual abuse charges that were unrelated to Surreptitious recording and burglary charges, which severely prejudiced Petitioner by the jury considering the charges together.
- Failed to properly prepare for trial by not interviewing key witnesses, not cross-examining witnesses, not reviewing video evidence used against Petitioner or having the videotapes used against Petitioner properly examined.
- Failed to consult with any experts in a case involving complex legal and medical issues, including hiring a doctor to conduct a psychosexual evaluation that would have shown that Petitioner is at a low risk to re-offend, which would have been instrumental in pre-trial proceedings.
- Failed to properly advise Petitioner with respect to a plea agreement where

Petitioner would have been subject to a 14-20 year prison term rather than being sentenced to 152.5 years in prison, among other deficiencies.

The trial court denied the petition for post-conviction relief without conducting an evidentiary hearing. (Pet. App. 5a). This was Petitioner's first and only petition for post-conviction relief in this case.

Petitioner filed a petition for review to the Arizona Court of Appeals and the Arizona Supreme Court. Both petitions were denied. (Pet. App. 1-4a).

Subsequent to the post-conviction relief proceedings involving Petitioner's claim of ineffective assistance of counsel, Petitioner discovered new evidence relating to his trial counsel's impairment due to trial counsel's illegal substance abuse. On August 10, 2022, Petitioner filed a notice of post-conviction relief with the Maricopa County Superior Court. On September 14, 2022, the trial court dismissed that notice, indicating that it was Petitioner's fourth petition. (Pet. App. 5a). The trial court also stated that Petitioner's "previous Rule 32 proceedings were unsuccessful." Id.

Before filing the Notice of Post-Conviction Relief on August 10, 2022, Petitioner had only one Rule 32 proceeding under the Arizona Rules of Criminal Procedure (post-conviction relief proceedings) before the trial court, the Arizona Court of Appeals, and the Arizona Supreme

Court. He has only filed one petition, not four as the Arizona courts have found. The confusion causing the courts to indicate Petitioner has had multiple post-conviction relief proceedings perhaps came from a series of events not caused by Petitioner.

First Notice of Post-Conviction Relief

On March 2, 2010, the jury returned guilty verdicts against Petitioner. Before sentencing, on May 25, 2010, Petitioner filed a Notice of Appeal. Then, on June 8, 2010, the trial court held Petitioner's sentencing hearing. Following Petitioner's conviction and sentencing, he was assigned appellate counsel to handle his direct appeal. While Petitioner's direct appeal was pending, in August of 2010, a Notice of Post-Conviction was filed with the Maricopa County Superior Court.

As a matter of routine and custom in Arizona, this Notice was dismissed because the direct appeal was pending. This first Notice of Post-Conviction Relief is now being viewed by the Arizona courts as Petitioner's first Rule 32 proceeding and petition, which is incorrect. "A defendant commences a Rule 32 proceeding by filing a notice, followed by a petition." *State v. Gutierrez*, 229 Ariz. 573, 578, 278 P.3d 1276, 1281 (2012), citing Rules 32.4(a, (c)(2), 32.5 of the Arizona Rules of Criminal Procedure. Petitioner never filed a petition with respect to that August 2010 Notice of Post-Conviction Relief; the Notice was dismissed without

prejudice, with leave to file once the Arizona Court of Appeals issued an order and mandate.

Second Notice of Post-Conviction Relief

On June 30, 2011, the Arizona Court of Appeals affirmed Petitioner's convictions. Appellate counsel did not inform Petitioner that the Arizona Court of Appeals had issued a mandate, nor did he file a Notice of Post-Conviction Relief on Petitioner's behalf.

After some time had passed in which Petitioner had not heard from appellate counsel, in December 2011, Petitioner wrote a letter to the Maricopa County Superior Court inquiring about the status of the Rule 32 proceedings. Maricopa County Superior Court treated the letter as a Notice of Post-Conviction Relief and dismissed the PCR proceedings as untimely.

The Arizona courts are treating this letter of inquiry as Petitioner's second Rule 32 proceeding and petition, which is incorrect.

Up until this point, Petitioner had not presented any issues relating to Rule 32 to the Court and had not filed a petition for post-conviction relief.

On April 23, 2012, Petitioner filed a Notice of Post-Conviction Relief explaining the above-referenced situation relating to appellate counsel. The Maricopa County Superior Court, acknowledging that the failure to timely file a Notice of Post-Conviction Relief was not

Petitioner's fault but rather was appellate counsel's fault, permitted the Notice of Post-Conviction relief to be filed and set a due date for a petition for post-conviction relief to be filed. This was the first time in Petitioner's case where Rule 32 proceedings were initiated, not the third.

While investigating Petitioner's claims under Rule 32, a critical witness was needed to provide a statement relating to ineffective assistance of counsel. That witness was unable to provide a statement due to mental competency issues. The witness was overseen by the Maricopa County Public Guardian and Maricopa County was not permitting the witness to make a statement until he was deemed competent, which would take a long period of time. As such, the Maricopa County Superior Court dismissed the proceedings without prejudice, so that the proceedings could be re-instated once the witness could provide a statement.

This dismissal was not a denial of Petitioner's Rule 32 petition or proceedings. Nevertheless, the Arizona Court of Appeals has taken the position that up to this point, Petitioner has had three petitions denied. Petitioner had not filed a single petition yet.

Fourth "Petition" for Post-Conviction Relief

In June 2019, Petitioner's Rule 32 proceeding was reinstated and on October 25, 2019, he filed his first petition for post-conviction relief. That first petition was denied and Petitioner filed a petition for review with the

Arizona Court of Appeals. The Arizona Court of Appeals denied the petition stating, “This is petitioner’s fourth petition.” Again, Petitioner had filed only one petition in the Maricopa County Superior Court, not four. The series of notices filed in the superior court does not affect whether a later petition is deemed successive. Nevertheless, the Arizona courts have improperly viewed the *notices* and a *letter* as *petitions* for an inexplicable reason.

Because the Arizona courts have mischaracterized and miscounted the number of petitions and proceedings Petitioner has had, it is axiomatic that they have used an incorrect standard and state of mind while examining and ruling on the pleadings he has filed.

With respect to the case at hand, Petitioner filed a notice of post-conviction relief on August 10, 2022. In that notice, Petitioner outlined issues relating to newly discovered evidence of his trial attorney’s illegal substance abuse which resulted in the trial attorney’s death. Petitioner provided newly discovered evidence of the trial attorney’s illegal drug use that was occurring during the time the trial attorney was representing Petitioner.

Again, the Maricopa County Superior Court found that this was Petitioner’s fourth (not fifth) petition. The trial court dismissed Petitioner’s notice of post-conviction relief stating that Petitioner’s assertions in his Notice of Post-Conviction Relief should be “characterized as a successive claim of ineffective

assistance under Ariz. R. Crim. P. 32.1(a).” Tr. Ct. Order, 09/14/2022, pg. 2. The trial court went on to find that “[b]ecause Defendant already raised an ineffective assistance claim, relief on this ground is precluded.” Id. The trial court went further and found that even if Petitioner is presenting new claims of ineffective assistance of counsel, those claims would be precluded, as well. Id.

Petitioner filed a motion for reconsideration with respect to the trial court’s dismissal of the notice of post-conviction relief, which the trial court denied. Petitioner filed a petition for review with the Arizona Court of Appeals, which was denied. Petitioner filed a motion for reconsideration with the Arizona Court of Appeals, which was also denied without findings of fact or conclusions of law. Petitioner then filed a petition for review in the Arizona Supreme Court, which was also denied without providing any reasoning. This petition follows.

REASONS FOR GRANTING THE WRIT

The Sixth Amendment, applicable to the State of Arizona through the Fourteenth Amendment, guaranteed Petitioner the right to competent counsel in his criminal prosecution unless the right was competently and intelligently waived by Petitioner. U.S. Const., VI Amend.; See, *Gideon v. Wainwright*, 372 U.S. 335 (1963). The right to competent counsel in a

criminal proceeding is perhaps the most fundamental right a defendant can possess.

In this case, Petitioner, in his Notice of Post-Conviction Relief outlining the newly discovered evidence regarding his trial counsel's debilitated state, is ultimately raising a new issue relating to the right to counsel, at all, under the Sixth Amendment. Because Petitioner's claim is "of sufficient constitutional magnitude" it requires a knowing, voluntary, and intelligent waiver. See, *Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067, 1071 (2002).

At no time did Petitioner waive his right to competent counsel or agree to be represented by counsel who was under the influence of illegal substances or had a mental defect significant enough to constitute Petitioner not being afforded counsel under the Sixth Amendment. This case is about Petitioner's right to counsel, not just about ineffective counsel.

I. Evidence of a defense attorney's impairment due to substance abuse discovered after a defendant's first petition for post-conviction relief was decided constitutes newly discovered evidence and supports a claim under the U.S. Constitution's Sixth Amendment right to counsel in a criminal proceeding.

Petitioner's assertions in the notice of post-conviction relief are not a mere recitation of what was already presented to the Arizona courts, or

what could have been presented to the Arizona courts. Petitioner has never had a chance to present the claim of newly discovered evidence relating to his trial attorney's illegal substance abuse until learning of that abuse. Petitioner assumed, but could not prove, that his trial counsel was using illegal substances or was suffering from debilitating mental health issues.

The newly discovered evidence Petitioner obtained was that trial counsel engaged in years of illegal drug abuse and psychiatric issues that plagued him during that time. The evidence showed that trial counsel would be too intoxicated to attend court or would need assistance in "sobering up" so that he could attend hearings and represent clients. The evidence corroborates Petitioner's previous claims of ineffective assistance of counsel and proves that his right to counsel under the Sixth Amendment was violated by having an attorney represent him who was under the influence of drugs and in active addiction.

Kristen Hansen, previously Kristen Baker, trial counsel's ex-wife also provided newly discovered evidence in an email that stated trial counsel was abusing substances during the time he was handling Petitioner's case. Ms. Hansen wrote that she was married to trial counsel during the time he handled Petitioner's case.

Also during this time, there were a series of State Bar complaints made against trial counsel relating to his lack of communication, failure to

file motions, unprofessionalism, and other issues that were likely due to his active addiction.

At the risk of stating the obvious, Petitioner's right to counsel was violated. The remainder of Petitioner's life was on the scales of justice, and on the other side was a fatally impaired defense attorney.

In Petitioner's first petition for post-conviction relief, he raised concerns regarding his attorney's performance before and during trial. Petitioner did not have any evidence that his trial attorney was using illegal substances or suffering from incapacitating mental illness. Instead, Petitioner raised what he speculated was happening with his trial attorney (substance abuse problem and possible mental illness).

The actual incompetence shown by trial counsel, such as not filing critical motions, interviewing witnesses, consulting with and hiring any experts, etc., were symptoms of a larger, fundamental issue that affected Petitioner's right to counsel under the Sixth Amendment. In the previous petition for post-conviction relief, Petitioner could only speculate regarding the basis for his trial counsel's incompetence; now Petitioner has evidence to support this new claim of the violation of his right to counsel under the Sixth Amendment. See *State v. Rosario*, 195 Ariz. 264, ¶ 23, 987 P.2d 226, 230 (App.1999) (claim for post-conviction relief must be based on "a provable reality, not mere speculation").

This situation is no different than a defendant who maintains and argues their innocence throughout their post-conviction proceedings, only to later have DNA evidence actually prove their previous innocence claims. In this case, Petitioner felt his trial counsel was under the influence and/or suffering from mental illness while “representing” him but did not have the actual evidence thereof. He filed a petition showing the effects of that addiction and diminished mental health.

Now, Petitioner has learned of the underlying evidence and is attempting to present it for the first time in a second petition for post-conviction relief. And Petitioner is not just presenting the same issues previously presented but is rather arguing that he was denied his right to counsel under the Sixth Amendment based on his trial counsel’s condition at the time of his pre-trial and trial proceedings.

The Arizona courts dismissed Petitioner’s notice of post-conviction relief, thereby foreclosing even the possibility of the courts considering if or how Petitioner’s rights were violated by being represented by an attorney who was in active addiction and suffering from psychiatric issues.

The Arizona courts have not had before them the evidence that Petitioner has discovered with respect to the incapacity of his trial attorney regarding illegal substance abuse and debilitating mental illness. This new evidence goes to the question of whether Petitioner was provided with counsel, as contemplated by the

Sixth Amendment, which should be developed in a petition for post-conviction relief. In any event, this issue has not been adjudicated in any proceeding before the Arizona courts.

Petitioner did not waive his right to counsel at trial, which if Petitioner's claims and the new evidence prove to be true regarding trial counsel's substantial illegal drug abuse and mental illness, Petitioner would have had to waive the right to counsel because trial counsel was not in a condition to represent any defendant involved in criminal proceedings, especially one facing over 150 years in prison on over 50 criminal counts.

The Arizona Supreme Court's ruling in *Stewart* supports Petitioner's argument that his Notice of Post-Conviction Relief is not subject to preclusion under Arizona Rule of Criminal Procedure, Rule 32.2(a)(3) because he did not waive his right to counsel. In *Stewart*, the Arizona Supreme Court, when discussing the issue of waiver and preclusion under Rule 32.2(a)(3), found "that whether a claim was of sufficient constitutional magnitude to require knowing waiver 'does not depend upon the merits of the particular ground. It depends merely upon the particular right alleged to have been violated.'" *State v. Lopez*, 234 Ariz. 513, 515, 323 P.3d 1164, 1166 (Ct. App. 2014), citing *Stewart*, 202 Ariz. 446, ¶ 10, 46 P.3d at 1068.

In this case, the right Petitioner is alleging was violated was his right to counsel under the Sixth Amendment of the United States Constitution, applicable to Arizona through the

Fourteenth Amendment. As argued above, a defendant's right to counsel is perhaps the most fundamental right a defendant possesses before, during, and after their trial. Petitioner asserts that his right to counsel, which he did not knowingly waive at any time, is of sufficient constitutional magnitude to require such a waiver. Therefore, the exception in Rule 32.2(a)(3) – “except when the claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant” – applies to Petitioner’s Notice of Post-Conviction Relief.

CONCLUSION

For the reasons stated above, the judgment of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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APPENDIX A

Supreme Court
STATE OF ARIZONA

November 8, 2023

RE: STATE OF ARIZONA v JEREMY ALAN
DOUGLASS

Arizona Supreme Court No. CR-23-0118-PR
Court of Appeals, Division One No. 1 CA-CR 22-
0531 PRPC
Maricopa County Superior Court No. CR2009-
030272-001

GREETINGS:

The following action was taken by the Supreme
Court of the State of Arizona on November 8,
2023, in regard to the above-referenced
cause:

ORDERED: Petition for Review = DENIED.
Justice Montgomery did not participate in the
determination of
this matter.

Tracie K. Lindeman, Clerk

APPENDIX B

IN THE ARIZONA COURT OF APPEALS DIVISION ONE

STATE OF ARIZONA, Respondent,
v.

JEREMY ALAN DOUGLASS, Petitioner.

No. 1 CA-CR 22-0531 PRPC

FILED 4-6-2023

Petition for Review from the Superior Court in
Maricopa County No. CR2009-030272-001
The Honorable Kathleen H. Mead, Judge
(Retired)

REVIEW GRANTED; RELIEF DENIED

COUNSEL
Maricopa County Attorney's Office, Phoenix By
Krista Wood
Counsel for Respondent

The Hopkins Law Office, P.C., Woodland,
California By Cedric Martine Hopkins
Counsel for Petitioner

MEMORANDUM DECISION

Presiding Judge Maria Elena Cruz, Judge James
B. Morse Jr., and Judge Daniel J. Kiley delivered
the decision of the Court.

PER CURIAM:

¶1 Petitioner Jeremy Alan Douglass seeks review of the superior court's order denying his petition for post-conviction relief. This is petitioner's fourth successive petition.

¶2 Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012). It is petitioner's burden to show that the superior court abused its discretion by denying the petition for post-conviction relief. See *State v. Poblete*, 227 Ariz. 537, 538, ¶ 1 (App. 2011) (petitioner has burden of establishing abuse of discretion on review).

¶3 We have reviewed the record in this matter, the superior court's order denying the petition for post-conviction relief, and the petition for review. We find that petitioner has not established an abuse of discretion.

¶4 We grant review and deny relief.

APPENDIX C

**SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY**

CR2009-030272-001 SE 10/14/2022

CLERK OF THE COURT
HONORABLE KATHLEEN MEAD

STATE OF ARIZONA

v.

JEREMY ALAN DOUGLASS (001)

ORDER

The Court is in receipt of Defendant's Motion for Reconsideration filed 10/10/2022.

IT IS ORDERED denying Defendant's Motion for Reconsideration.

APPENDIX D

SUPERIOR COURT OF ARIZONA MARICOPA COUNTY

CR2009-030272-00I SE 09/07/2022

HONORABLE KATHLEEN MEAD

**CLERK OF THE COURT
A. Chee Deputy**

STATE OF ARIZONA

V.

JEREMY ALAN DOUGLASS (001)

**JEREMY ALAN DOUGLASS
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RULE 32 PROCEEDING DISMISSED

Pending before the Court is Defendant's Notice Requesting Post-Conviction Relief filed on August 15, 2022. This is his fourth Rule 32 proceeding. It is also successive.

A jury found Defendant guilty of thirty counts of surreptitious recording, all class 5 felonies; one count of attempted surreptitious recording, a class 6 felony; eight counts of sexual assault, all

class 2 felonies; seven counts of sexual abuse, all class 5 felonies; and ten counts of third-degree burglary, all class 4 felonies. On June 8, 2010, the Court entered judgment and sentenced him to terms of imprisonment totaling 151.25 years. The Arizona Court of Appeals affirmed the convictions but modified the sentences to total 150 years, issuing the mandate on September 30, 2011. State v. Douglass, 1 CA-CR 10-0438 (App. June 30, 2011) (mem. filed). His previous Rule 32 proceedings were unsuccessful. After the third Rule 32 dismissal, the Arizona Court of Appeals granted review but denied relief, issuing the mandate on March 26, 2021. State v. Douglass, I CA-CR 20-0214 PRPC (App. Sept. 24, 2020) (mem. filed).

In his current submission, Defendant claims that newly discovered material facts support relief under Ariz. R. Crim. P. 32.1(e). (Notice at 3) Rule 32.1(e) claims are "not subject to preclusion under Rule 32.2(a)(3)." Ariz. R. Crim. P. 32.2(b). The Rule 32.1(e) claim must be filed "within a reasonable time after discovering the basis for the claim." Ariz. R. Crim. P. 32.4(b)(3)(B). To be entitled to Rule 32.1(e) relief, Defendant must show that the facts were discovered after trial although existed before trial; the facts could not have been discovered and produced at trial or on appeal through reasonable diligence; the facts are neither solely cumulative nor impeaching; the facts are material; and the facts probably would have changed the verdict or sentence. State v. Saenz, 197 Ariz. 487, 489, ,i 7, 4 P.3d 1030, 1032 (App. 2000), see also Ariz. R. Crim. P. 32.1(e). Importantly, "[e]vidence is not newly

discovered unless it was unknown to the trial court, the defendant, or counsel at the time of trial and neither the defendant nor counsel could have known about its existence by the exercise of due diligence." Saenz, 197 Ariz. at 490, ,i 13, 4 P.3d at 1033.

To support his Rule 32.1(e) claim, Defendant advises that he recently learned that his trial counsel had died from "an overdose of methamphetamine, amphetamine, GBH (gamma- hydroxybutyric acid), and Delta-9 Carboxy THC." (Notice Attachment) Defendant advises that he suspected trial counsel was under the influence because he sweated profusely and became "angry and hostile, scattered and not focused." (Id) Following his conviction, Defendant obtained new counsel for sentencing. According to Defendant, his appellate attorney informed Defendant that trial counsel "had been ordered into rehab and his cases reassigned just following my trial." (Id.) Defendant further claims that he "had no way to prove it" until trial counsel died. (Id.) In addition, Defendant states that he recently learned that a paralegal working in trial counsel's office was a "disbarred attorney with a history of drug use." (Id.)

The concerns about the quality of his trial representation are not new, as Defendant had raised them in the previous Rule 32 proceeding. Even earlier, Defendant had learned from appellate counsel about trial counsel's admission into rehab. (Id) Moreover, in an affidavit supporting the third Rule 32 proceeding filed on

November 22, 2019, Defendant recounts that he informed the judge on the first day of trial of his concerns about trial counsel. (Affidavit at ,r 9)

This Court elected to allow trial to proceed and subsequently dismissed his other three Rule 32 proceedings. Defendant is not entitled to repackage arguments about his counsel's ineffective assistance from the third Rule 32 proceeding as a Rule 32.1(e) claim by elaborating on the reasons for trial counsel's conduct or the circumstances of counsel's death years thereafter. Furthermore, the fact that counsel's paralegal may have been an ex-addict is not sufficiently material to warrant relief "considering the overwhelming evidence presented by the State." (Response filed on Jan. 10, 2020 at 16)

His Rule 32.1(e) claim is more accurately characterized as a successive claim of ineffective assistance under Ariz. R. Crim. P. 32. 1(a). Because Defendant already raised an ineffective assistance claim, relief on this ground is precluded. See Ariz. R. Crim. P. 32.2(a)(2). But even if he is raising new ineffective assistance of counsel claims, relief is still precluded. See Ariz. R.Crim. P. 32.2(a)(3); State v. Spreitz, 202 Ariz. 1, 2, ,r 4, 39 P.3d 525, 526 (2002) ("Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a . . . post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.") (Emphasis in original). In sum, Defendant fails to state a claim for which relief can be granted in a successive Rule

32 proceeding. Defendant must assert substantive claims and adequately explain the reasons for their untimely assertion. Ariz. R. Crim. P. 32.2(b). He has failed to meet this standard.

IT IS THEREFORE ORDERED dismissing Defendant's Notice Requesting Post- Conviction Relief pursuant to Ariz. R. Crim. P. 32.2(b) and Ariz. R. Crim. P. 32.11(a).

