

Appendix A

Decision of State Court of Appeals

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

ALPHEUS ELITE HAMILTON, *Petitioner*.

No. 1 CA-CR 22-0513 PRPC
FILED 4-20-2023

Petition for Review from the Superior Court in Maricopa County
No. CR2014-132517-001
The Honorable David J. Palmer, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Alpheus Elite Hamilton, Florence
Petitioner

MEMORANDUM DECISION

Vice Chief Judge David B. Gass, Judge Brian Y. Furuya, and Judge Andrew
M. Jacobs delivered the decision of the court.

STATE v. HAMILTON
Decision of the Court

PER CURIAM:

¶1 Petitioner Alpheus Elite Hamilton seeks review of the superior court's order denying his petition for post-conviction relief. This is petitioner's second 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, 278 P.3d 1276, 1280 (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, ¶ 1, 260 P.3d 1102, 1103 (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.



AMY M. WOOD • Clerk of the Court
FILED: AA

Appendix B

Decision of State Trial Court



SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2014-132517-001 SE

10/24/2022

HONORABLE DAVID J. PALMER

CLERK OF THE COURT
J. Hogue
Deputy

STATE OF ARIZONA

KRISTA WOOD

v.

ALPHEUS ELITE HAMILTON (001)

ALPHEUS ELITE HAMILTON
#308577 ASPC EYMAN/MEADOWS
P O BOX 3300
FLORENCE AZ 85132

COURT ADMIN-CRIMINAL-PCR
JUDGE PALMER

RULE 32 PROCEEDING DISMISSED

Pending before the Court are Defendant's Notice Requesting Post-Conviction Relief, Petition for Post-Conviction Relief, and "Rule 32 Petition for Post-Conviction Relief," all filed on August 9, 2022. These filings comprise his second Rule 32 proceeding. It is successive.

A jury found Defendant guilty of two counts of molestation of a child, both class 2 felonies and dangerous crimes against children; one count of sexual conduct with a minor, a class 2 felony and a dangerous crime against children; and four counts of sexual conduct with a minor, all class 6 felonies. On March 4, 2016, the Court entered judgment and sentenced him to two concurrent and flat 17-year terms of imprisonment and a successive and flat 20-year term of imprisonment. In addition, the Court suspended imposition of sentence and placed him on four lifetime terms of probation, commencing upon release from prison. The Arizona Court of Appeals affirmed his convictions and punishments, issuing the mandate on November 21, 2017. *State v. Hamilton*, 1 CA-CR 16-0166 (App. Aug. 24, 2017) (mem. filed). His first Rule 32 proceeding was unsuccessful.

A. Rule 32.1(a) Claims

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In his current submission, Defendant contends that his convictions and punishments were obtained in violation of his due process rights under the Fifth and Fourteenth Amendments, thereby entitling him to relief under Ariz. R. Crim. P. 32.1(a). (Rule 32 Petition at 2-3; Petition at 2) Specifically, Defendant claims that the prosecutor engaged in misconduct by misrepresenting the evidence in opening statement and closing argument. (Rule 32 Petition at 2-3 & Exs.; Petition at 2, 3) Because Defendant had raised claims concerning the closing argument on appeal, relief on this ground is precluded. *See* Ariz. R. Crim. P. 32.2(a)(2). But even if he is raising new claims, relief is still precluded. *See* Ariz. R. Crim. P. 32.2(a)(3).

B. Rule 32.1(e) Claim

Alternatively, Defendant claims relief based upon newly discovered material facts pursuant to Ariz. R. Crim. P. 32.1(e). (Notice at 3; Petition at 2, 3) Such claims 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, ¶ 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, ¶ 13, 4 P.3d at 1033.

Defendant states: "The evidence was newly discovered material facts. The DNA was misrepresented by state, DNA was exculpatory evidence. Alleged victim's DNA was not on the towel. Learned of in March of 2022." (Petition at 3) In support of his argument, Defendant includes what appear to be selections from the trial transcripts concerning the DNA evidence. (*Id.* Exs.) Testimony from Defendant's own trial does not qualify as new evidence. To the extent that Defendant is offering any new legal arguments, he is not entitled to Rule 32.1(e) relief based upon newly discovered material facts. Moreover, defense counsel was aware of the trial record at all relevant times.

C. Rule 32.1(h) Claim

He further claims that he is innocent under Ariz. R. Crim. P. 32.1(h). (Notice at 3; Petition at 2, 3; Rule 32 Petition at 1-3) The rule requires Defendant 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." Ariz. R. Crim. P. 32.1(h). Defendant claims that insufficient evidence supports his convictions and fails to meet the Rule 32.1(h) standard. Defendant is not entitled to challenge "under the

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guise of a Rule 32 claim, the sufficiency of the trial evidence to support the jury's verdict." See *State v. Gutierrez*, 229 Ariz. 573, 580 n.3, ¶ 34, 278 P.3d 1276, 1283 n.3 (2012).

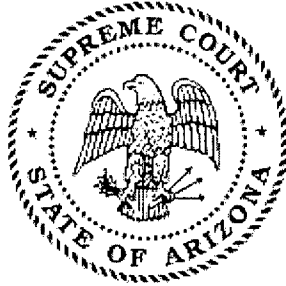
In sum, Defendant fails to state a claim for which relief can be granted in a successive Rule 32 proceeding. Defendant must assert substantive claims and adequately explain the reasons for their untimely assertion. Ariz. R. Crim. P. 32.2(b). He has failed to meet this standard.

IT IS THEREFORE ORDERED dismissing Defendant's Notice Requesting Post-Conviction Relief, Petition for Post-Conviction Relief, and "Rule 32 Petition for Post-Conviction Relief" under Ariz. R. Crim. P. 32.2(b) and Ariz. R. Crim. P. 32.11(a).

IT IS FURTHER ORDERED denying the request for appointment of counsel.

Appendix C

Decision of State Supreme
Court Denying Review



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

October 10, 2023

RE: STATE OF ARIZONA v ALPHEUS ELITE HAMILTON

Arizona Supreme Court No. CR-23-0112-PR

Court of Appeals, Division One No. 1 CA-CR 22-0513 PRPC

Maricopa County Superior Court No. CR2014-132517-001

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on October 10, 2023, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

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

Tracie K. Lindeman, Clerk

TO:

Alice Jones

Philip D Garrow

Alpheus Elite Hamilton, ADOC 308577, Arizona State Prison,

Florence - Eyman Complex-Meadows Unit

Amy M Wood

sb