

Arizona Supreme Court  
Criminal Post Conviction

**CR-22-0272-PC**

**STATE OF ARIZONA v DAVID SCOTT DETRICH**

**Appellate Case Information**

Case Filed: 17-Nov-2022  
Case Closed:

**Dept/Composition**

**Side 1. STATE OF ARIZONA, Plaintiff**  
(Litigant Group) STATE OF ARIZONA

• State of Arizona, Respondent

**Attorneys for: Plaintiff**

Kristin K Mayes, Esq. (AZ Bar No. 22584)  
Jason Lewis, Esq. (AZ Bar No. 32461)  
Laura P Chiasson, Esq. (AZ Bar No. 19025)

**Side 2. DAVID SCOTT DETRICH, Defendant**  
(Litigant Group) DAVID SCOTT DETRICH

• David Scott Detrich, Petitioner

**Attorneys for: Defendant**

Amy Armstrong, Esq. (AZ Bar No. 22795)  
Emily Skinner, Esq. (AZ Bar No. 25761)

**CASE STATUS**

Sep 12, 2024....Case Closed

Sep 12, 2024....Decision Rendered

Aug 2, 2024.....Decision Rendered

PREDECESSOR CASE(S)	Cause/Charge/Class	Judgment/Sentence	Judge, Role <Comments>	Trial	Dispo
PIM CR-029267			Renee T Bennett, Judge on PC		

**2 CASE DECISIONS**

**02-Aug-2024 ORDER**

\* AMENDED 9/12/2024

Filed: **02-Aug-2024**

Mandate:

Per Curiam

Decision Disposition

**Relief Denied**

On September 2, 2022, the superior court summarily dismissed Petitioner's successive petition for post-conviction relief, which alleged (1) his conviction or sentence was obtained in violations of the United States or

**Ann Timmer**

**12-Sep-2024 DECISION ORDER**

\* Per Curiam

Filed: **12-Sep-2024**

Mandate:

On September 2, 2022, the superior court summarily dismissed Petitioner's successive petition for post-conviction relief, which alleged (1) his conviction or sentence was obtained in violations of the United States or Arizona constitution

Decision Disposition

**Relief Denied**

**Ann Timmer**

**23 PROCEEDING ENTRIES**

- 17-Nov-2022 FILED: Motion for Procedural Order for Extension of Word Limit; Certificate of Service (Petitioner Detrich)
- 17-Nov-2022 FILED: Petition for Review; Certificate of Service; Certificate of Compliance (Petitioner Detrich)

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23 PROCEEDING ENTRIES

3. 17-Nov-2022 FILED: Appendices to Petition for Review; Certificate of Service (Petitioner Detrich)
4. 18-Nov-2022 FILED: Supplement to Motion for Procedural Order for Extension of Word Limit; Certificate of Service (Petitioner Detrich)
5. 18-Nov-2022 FILED: Notice of Errata Re: Incomplete Appendix; Certificate of Service (Petitioner Detrich)
6. 18-Nov-2022 FILED: Appendices to Petition for Review; Certificate of Service (Petitioner Detrich)
7. 14-Dec-2022 FILED: The State of Arizona's Response to Petition for Review; Certificate of Service (Respondent)
8. 14-Dec-2022 FILED: Certificate of Compliance; Certificate of Service (Respondent State)
9. 16-Dec-2022 FILED: Unopposed Motion for Procedural Order for Extension of Time to File Reply; Certificate of Service (Petitioner Detrich)
10. 21-Dec-2022 An "Unopposed Motion for Procedural Order for Extension of Time to File Reply" (Petitioner Detrich) having been filed on December 16, 2022,  
  
IT IS ORDERED granting a first extension of time to file the reply to response to petition for review on or before January 26, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
11. 21-Dec-2022 A "Motion for Procedural Order for Extension of Word Limit" (Petitioner Detrich) having been filed with a 17,798 or word count petition for review, and the Clerk of the Court having been authorized by the Supreme Court to enter orders granting or denying requests for extended word count,  
  
IT IS ORDERED granting Petitioner's request to exceed the twelve-thousand-word count stated in Arizona Rule of Criminal Procedure Rule 32.16(c)(1) by 5,798 words. The petition for review is filed as of November 17, 2022. (Tracie K. Lindeman Clerk)
12. 25-Jan-2023 FILED: Unopposed Motion for Procedural Order for Extension of Time to File Reply; Certificate of Service (Petitioner Detrich)
13. 25-Jan-2023 An "Unopposed Motion for Procedural Order for Extension of Time to File Reply" (Petitioner Detrich) having been filed on January 25, 2023,  
  
IT IS ORDERED granting a 6-day extension of time to file the reply to response to petition for review on or before February 1, 2023. No further extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)
14. 26-Jan-2023 FILED: Motion for Procedural Order for Expansion of Word Limit; Certificate of Service (Petitioner Detrich)
15. 26-Jan-2023 FILED: Reply to Response to Petition for Review; Certificate of Service; Certificate of Compliance (Petitioner Detrich)
16. 27-Jan-2023 FILED: Notice of Errata [Cited Wrong Rule for Word Count]; Certificate of Service (Petitioner Detrich)
17. 13-Mar-2024 A "Motion for Procedural Order for Expansion of Word Limit" having been filed by Petitioner Detrich with Petitioner's 6,862-word "Reply to Response to Petition for Review" and the Clerk of the Court having been authorized by the Supreme Court to enter orders granting or denying requests for extended word count,  
  
IT IS ORDERED consistent with the provisions applicable to briefs in capital cases in Ariz. R. Crim. P. 32.16(c)(1) and (f)(3) that Petitioner's request to file the 6,862-word reply is granted. The "Reply to Response to Petition for Review" is filed as of January 26, 2023. (Tracie K. Lindeman Clerk)

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18. 2-Aug-2024 AMENDED 9/12/2024

Per Curiam

On September 2, 2022, the superior court summarily dismissed Petitioner's successive petition for post-conviction relief, which alleged (1) his conviction or sentence was obtained in violations of the United States or Arizona constitution, specifically, the State failed to disclose exculpatory materials in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972); (2) newly discovered material facts probably exist and probably would have changed the judgment and sentence; and (3) clear and convincing evidence establishes no reasonable factfinder would find Petitioner guilty beyond a reasonable doubt or that the death penalty would not have been imposed. See *Ariz. R. Crim. P. 32.1(a), (e), and (h)*. Petitioner also requested the superior court order deoxyribonucleic acid ("DNA") testing of certain evidence. See *A.R.S. § 13-4240*; *Ariz. R. Crim. P. 32.17*.

The superior court found that many of Petitioner's claims were untimely, precluded, or both, and that all Petitioner's claims failed to state colorable claims for relief or present a material issue of fact or law that would entitle him to relief under Rule 32. The superior court also found that the results of the DNA testing were not favorable to Petitioner, and therefore declined to order an evidentiary hearing. See *A.R.S. § 13-4240(J)*; *Ariz. R. Crim. P. 32.17(g)*.

Specifically, as to all the mitigation claims, the superior court found that Petitioner "has not demonstrated by clear and convincing evidence that the facts underlying the claim would be sufficient to establish the trial court would not have imposed the death penalty." Regarding the mitigating evidence including mental health evidence, the court found that Petitioner "has not presented a colorable claim as to actual innocence or actual innocence of the death penalty. Even if the proffered factual allegations are true, they would not probably have changed the verdicts, aggravating circumstance findings or sentence to death."

This Court reviews the superior court's denial of post-conviction relief for an abuse of discretion. *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) (holding that petitioner has burden of establishing abuse of discretion on review).

For this Court to find an abuse of discretion, it must find either (1) that the superior court's decision was not supported by the evidence or (2) that its reasons are "clearly untenable, legally incorrect, or amount to a denial of justice." *Bogard v. Cannon & Wendt Elec. Co.*, 221 *Ariz.* 325, 335-36 ¶ 39 (App. 2009) (quoting *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 *Ariz.* 344, 350 (App. 2006)). "Misapplication of law or legal principles constitutes an abuse of discretion." *Tobin v. Rea*, 231 *Ariz.* 189, 194 ¶ 14 (2013).

We need not decide whether the superior court's timeliness and preclusion rulings were correct. Whether or not Petitioner's Rule 32.1(a), (e), and (h) claims are untimely under Rule 32.4(b)(3)(A), (D) or precluded under Rule 32.2(a)(3), the record supports the superior court's findings that Petitioner failed to assert a material dispute of fact or law that would entitle him to relief. See *Ariz. R. Crim. P. 32.11(a)* (court must summarily dismiss petition if it presents no "material issue of fact or law that would entitle the defendant to relief"); *Ariz. R. Crim. P. 32.17(g)*; *State v. Krum*, 183 *Ariz.* 288, 292 (1995) ("To obtain an evidentiary hearing, a petitioner must make a colorable showing that the [factual] allegations, if true, would have changed the verdict.").

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, response, and reply.

Accordingly,

THE COURT FINDS that Petitioner has not established an abuse of discretion by the superior court.

THE COURT FURTHER FINDS that Petitioner is not entitled to relief under Rule 32.1(a), (e), or (h).

THE COURT FURTHER FINDS that Petitioner is not entitled to an evidentiary hearing or relief under Rule 32.17.

Based on the foregoing,

IT IS ORDERED granting review and denying relief. (Hon. Ann A. Scott Timmer)

19. 14-Aug-2024 FILED: Motion for Reconsideration; Certificate of Service; Certificate of Compliance (Respondent State)

20. 29-Aug-2024 The Clerk of the Supreme Court having been authorized by the Supreme Court to order any party to file a response at the direction of a Supreme Court staff attorney,

IT IS ORDERED that Defendant/Petitioner Dietrich shall file a response to the Respondent State of Arizona's motion for reconsideration on or before September 9, 2024, by 2:00 p.m.

IT IS FURTHER ORDERED no extensions of time shall be granted absent extraordinary circumstances. (Tracie K. Lindeman, Clerk)

21. 9-Sep-2024 FILED: Response to Motion for Reconsideration; Certificate of Service (Petitioner Detrich)

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22. 12-Sep-2024 On August 14, 2024, the Respondent State of Arizona filed a "Motion for Reconsideration," requesting that the "Court reconsider its decision not to determine 'whether the superior court's timeliness and preclusion rulings were correct.'" On September 9, 2024, Petitioner filed his response to the motion for reconsideration.

The Court did, in fact, review the superior court's preclusion and timeliness rulings, and affirmed those rulings. However, there being some misperception of the Court's ruling, on the Court's own motion,

IT IS ORDERED that the August 2, 2024 order is amended on page 3, starting with the paragraph that begins "We need not decide. . .[.]" as follows:

"We need not decide whether the superior court's timeliness and preclusion rulings were correct to address the superior court's merits rulings. Whether or not Petitioner's Rule 32.1(a), (e), and (h) claims are untimely under Rule 32.4(b)(3)(A), (D) or precluded under Rule 32.2(a)(2), (a)(3), the record supports, and the Court affirms, the superior court's findings that Petitioner failed to assert a material dispute of fact or law that would entitle him to relief. See Ariz. R. Crim. P. 32.11(a) (court must summarily dismiss petition if it presents no "material issue of fact or law that would entitle the defendant to relief"); Ariz. R. Crim. P. 32.17(g); State v. Krum, 183 Ariz. 288, 292 (1995) ("To obtain an evidentiary hearing, a petitioner must make a colorable showing that the [factual] allegations, if true, would have changed the verdict."). Nonetheless, the Court has also reviewed and affirms the superior court's preclusion and timeliness rulings. See Ariz. R. Crim. P. 32.2(a)(2), (a)(3); 32.4(b)(3)(A), (D).

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, response, and reply.

Accordingly,

THE COURT FINDS that Petitioner has not established an abuse of discretion by the superior court.

THE COURT FURTHER FINDS that all Petitioner's claims are, with the exception of his Rule 32.1(e) and 32.1(h) claims referenced as "Factual Allegation One" and "DNA results" by the superior court, untimely and precluded. See Ariz. R. Crim. P. 32.2(a)(2), (a)(3); 32.4(b)(3)(A), (D).

THE COURT FURTHER FINDS that Petitioner has not presented a material issue of fact or law that would entitle him to relief under Rule 32.1(a), (e), or (h).

THE COURT FURTHER FINDS that Petitioner is not entitled to an evidentiary hearing or relief under Rule 32.17.

Based on the foregoing,

IT IS ORDERED granting review and denying relief."

The balance of the Court's August 2, 2024 order remains unchanged. An amended order incorporating these amendments will issue forthwith.

IT IS FURTHER ORDERED denying the State's motion for reconsideration as moot in light of the Court's clarification of its prior order. (Hon. Ann A. Scott Timmer)

-----CASE STATISTICALLY TERMINATED-----

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23 PROCEEDING ENTRIES

23. 12-Sep-2024 -----AMENDED DECISION ORDER -----

Per Curiam

On September 2, 2022, the superior court summarily dismissed Petitioner's successive petition for post-conviction relief, which alleged (1) his conviction or sentence was obtained in violations of the United States or Arizona constitution, specifically, the State failed to disclose exculpatory materials in violation of *Brady v. Maryland*, 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972); (2) newly discovered material facts probably exist and probably would have changed the judgment and sentence; and (3) clear and convincing evidence establishes no reasonable factfinder would find Petitioner guilty beyond a reasonable doubt or that the death penalty would not have been imposed. See Ariz. R. Crim. P. 32.1(a), (e), and (h). Petitioner also requested the superior court order deoxyribonucleic acid ("DNA") testing of certain evidence. See A.R.S. § 13-4240; Ariz. R. Crim. P. 32.17.

The superior court found that many of Petitioner's claims were untimely, precluded, or both, and that all Petitioner's claims failed to state colorable claims for relief or present a material issue of fact or law that would entitle him to relief under Rule 32. The superior court also found that the results of the DNA testing were not favorable to Petitioner, and therefore declined to order an evidentiary hearing. See A.R.S. § 13-4240(J); Ariz. R. Crim. P. 32.17(g).

Specifically, as to all the mitigation claims, the superior court found that Petitioner "has not demonstrated by clear and convincing evidence that the facts underlying the claim would be sufficient to establish the trial court would not have imposed the death penalty." Regarding the mitigating evidence including mental health evidence, the court found that Petitioner "has not presented a colorable claim as to actual innocence or actual innocence of the death penalty. Even if the proffered factual allegations are true, they would not probably have changed the verdicts, aggravating circumstance findings or sentence to death."

This Court reviews the superior court's denial of post-conviction relief for an abuse of discretion. *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) (holding that petitioner has burden of establishing abuse of discretion on review).

For this Court to find an abuse of discretion, it must find either (1) that the superior court's decision was not supported by the evidence or (2) that its reasons are "clearly untenable, legally incorrect, or amount to a denial of justice." *Bogard v. Cannon & Wendt Elec. Co.*, 221 Ariz. 325, 335-36 ¶ 39 (App. 2009) (quoting *Charles I. Friedman, P.C. v. Microsoft Corp.*, 213 Ariz. 344, 350 (App. 2006)). "Misapplication of law or legal principles constitutes an abuse of discretion." *Tobin v. Rea*, 231 Ariz. 189, 194 ¶ 14 (2013).

We need not decide whether the superior court's timeliness and preclusion rulings were correct to address the superior court's merits rulings. Whether or not Petitioner's Rule 32.1(a), (e), and (h) claims are untimely under Rule 32.4(b)(3)(A), (D) or precluded under Rule 32.2(a)(2), (a)(3), the record supports, and the Court affirms the superior court's findings that Petitioner failed to assert a material dispute of fact or law that would entitle him to relief. See Ariz. R. Crim. P. 32.11(a) (court must summarily dismiss petition if it presents no "material issue of fact or law that would entitle the defendant to relief"); Ariz. R. Crim. P. 32.17(g); *State v. Krum*, 183 Ariz. 288, 292 (1995) ("To obtain an evidentiary hearing, a petitioner must make a colorable showing that the [factual] allegations, if true, would have changed the verdict."). Nonetheless, the Court has also reviewed and affirms the superior court's preclusion and timeliness rulings. See Ariz. R. Crim. P. 32.2(a)(2), (a)(3); 32.4(b)(3)(A), (D).

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, response, and reply.

Accordingly,

THE COURT FINDS that Petitioner has not established an abuse of discretion by the superior court.

THE COURT FURTHER FINDS that all Petitioner's claims are, except his Rule 32.1(e) and 32.1(h) claims referenced as "Factual Allegation One" and "DNA results" by the superior court, untimely and precluded. Ariz. R. Crim. P. 32.2(a)(2), (a)(3); 32.4(b)(3)(A), (D).

THE COURT FURTHER FINDS that Petitioner has not presented a material issue of fact or law that would entitle him to relief under Rule 32.1(a), (e), or (h).

THE COURT FURTHER FINDS that Petitioner is not entitled to an evidentiary hearing or relief under Rule 32.17.

Based on the foregoing,

IT IS ORDERED granting review and denying relief. (Hon. Ann A. Scott Timmer)