

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2010-123572-001 DT

03/07/2014

HONORABLE SUSAN M. BRNOVICH

CLERK OF THE COURT
B. LaCorte
Deputy

STATE OF ARIZONA

LISA MARIE MARTIN

v.

GARY THOMAS KELLEY (001)

NATALEE SEGAL

COURT ADMIN-CRIMINAL-PCR

PCR DISMISSED

The Court has reviewed the Defendant's Petition For Post-Conviction Relief Pursuant To Rule 32, the State's Response, Defendant's Reply and the court's records.

Defendant files his claim on the basis that appellate counsel was ineffective for not raising the issue that the trial court erred by denying defendant's request for the crime prevention jury instruction. The State's response is that this issue is precluded because that issue was raised in a supplemental brief filed with the Court of appeals on July 17, 2012. The Court has reviewed the supplemental brief, Exhibit 1 to the States response. The brief was filed pro-per by defendant and does raise the issue of whether or not the Court erred in failing to give the crime prevention jury instruction. The Court of Appeals memorandum decision was filed on October 18, 2012 and specifically recognizes that "Defendant has been afforded an opportunity to file a supplemental brief in propia persona which he has done." P. 2 of the memorandum decision in CR11-0496. Although the decision does not specifically and separately discuss the issue, it is presumed that the Court of Appeals considered the arguments raised in the supplemental brief and acknowledged by the Court. Therefore,

The Court finds that the issue was properly raised and considered before the Court of Appeals during the appeal and is precluded. There can be no claim of ineffective assistance of counsel for failure to raise an issue that was brought before the court, although by defendant himself.

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IT IS ORDERED summarily denying defendant's Petition For Post Conviction Relief.

The Court also has before it several pleadings filed by the defendant after the PCR was filed and the court now rules.

1. Defendant's Motion for preparation of Transcripts for Indigent Petitions, R. 32.4 (d) is **denied**. This motion is denied because the rule 32 Petition has already been filed by counsel and certified by defendant. Additionally, defendant's request to withdraw the petition was denied. Finally, defendant is asking for transcripts from a trial that ended in a mistrial and is not even appealable.
2. Defendant's Motion Preparation Of Transcripts Shall Be At The County Expense, Defendant is Indigent is **denied**. The trial transcripts were already transcribed for the current PCR and previous appeal. The transcripts defendant is requesting is from an earlier trial.
3. Defendant's Motion Requesting Fee to be Waived For Having Court Reporter To Have Trial Proceeding Transcripts Prepared is **denied** for the reasons stated above.
4. Defendant's Motion To Halt PCR Rule 32 Until Trial Transcripts are Fully Prepared is **denied** for the reasons stated above.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.