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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

DANNY RAY COUCH, *Petitioner*.

No. 1 CA-CR 13-0836 PRPC
FILED 6-9-2015

Petition for Review from the Superior Court in Mohave County
No. S8015CR200900945
The Honorable Derek C. Carlisle, Judge *Pro Tem*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mohave County Attorney's Office, Kingman
By Matthew J. Smith
Counsel for Respondent

Danny Ray Couch, Florence
Petitioner

MEMORANDUM DECISION

Judge Margaret H. Downie, Judge Kenton D. Jones, and Judge Jon W. Thompson delivered the following decision of the Court.

PER CURIAM:

¶1 Danny Ray Couch petitions for review from the superior court's dismissal of his petition for post-conviction relief. We grant review but deny relief.

¶2 Couch pleaded guilty to molestation of a child and was sentenced to the presumptive term of seventeen years' imprisonment. Couch seeks review of the summary dismissal of his fourth successive petition for post-conviction relief. We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9(c).

¶3 The petition for review properly presents one claim: Couch contends trial counsel was ineffective by failing to present mitigating evidence at sentencing. Specifically, Couch argues his attorney should have presented mental health records that would have shown he suffered physical and mental abuse as a child. However, Couch raised this same issue in his second and third post-conviction relief proceedings. Any claim a defendant raised in an earlier post-conviction relief proceeding is precluded. Ariz. R. Crim. P. 32.2(a). None of the exceptions under Rule 32.2(b) apply.

¶4 Although the petition for review presents additional issues, Couch did not raise these issues in the petition for post-conviction relief filed in the superior court. A petition for review may not include issues not

first presented to the trial court. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii); *State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991); *State v. Wagstaff*, 161 Ariz. 66, 71, 775 P.2d 1130, 1135 (App. 1988); *State v. Ramirez*, 126 Ariz. 464, 467, 616 P.2d 924, 927 (App. 1980). We therefore grant review but deny relief.



Ruth A. Willingham · Clerk of the Court
FILED: ama