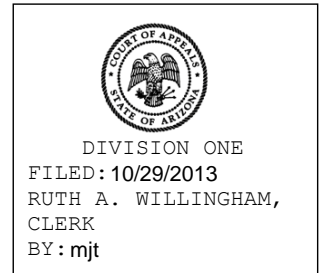


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**



STATE OF ARIZONA,) 1 CA-CR 12-0596-PRPC
)
Respondent,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
)
DARRYL KENDRAE SKINNER,) (Not for Publication -
) Rule 111, Rules of the
Petitioner.) Arizona Supreme Court)
)

Petition for Review from the Superior Court of Maricopa County

Cause Nos. CR2005-034640-001, CR2005-141833-001,
CR2005-141997-001 and CR2010-167045-001

The Honorable Randall H. Warner, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney Phoenix
By Lisa Marie Martin, Deputy County Attorney
Attorneys for Respondent

Darryl Kendrae Skinner Buckeye
Pro Se

PER CURIAM

¶1 In Maricopa County Superior Court, Petitioner Darryl Skinner pled guilty to kidnapping and robbery in one case, which resulted in the revocation of his probation in three other

cases. The trial court placed Skinner on five years' probation for kidnapping and reinstated probation for a prior marijuana conviction. The court sentenced him to an aggregate term of twelve and a half years' imprisonment on the remaining counts in all four cases. Skinner filed a pro se, consolidated "of-right" petition for post-conviction relief in all four cases after counsel found no colorable claims for relief. The trial court summarily dismissed the petition and Skinner now seeks review. We review the summary dismissal of a petition for post-conviction relief for abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9(c).

¶12 In his petition for review, Skinner presents four claims of ineffective assistance of counsel, all in the context of the kidnapping/robbery case. To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 688 (1984). To show prejudice, a defendant must show that there is a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

¶13 Skinner first makes the general statement that his trial counsel was ineffective when she failed to investigate the case or prepare a defense. Such a general statement, coupled with Skinner's failure to provide any citation to the record or legal authority, is insufficient to state a colorable claim of ineffective assistance. Ariz. R. Crim. P. 32.9(c)(1); see also *State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991).

¶14 Skinner also argues his counsel was ineffective when she failed to tell Skinner the victim did not want to go to trial, the victim claimed to have suffered emotional and psychological harm and that the victim claimed there was a sexual component to the offenses. These were all factors the prosecutor identified at the sentencing hearing within her argument regarding the appropriate sentence and why the plea was appropriate. Absent an interview of the victim, which a defendant is not entitled to, there was no way defense counsel could have known the victim would express these opinions to the prosecutor, and Skinner does not identify how she would have known otherwise. Further, Skinner argued in his petition that had he known the victim would make these representations, he would have "taken a different direction[.]" Skinner, however, never identified what that "different direction" may have been. He has, therefore, failed to state a colorable claim of

ineffective assistance based on the failure to discover what information the victim would tell the prosecutor for purposes of sentencing.

¶15 Skinner further argues his trial counsel was ineffective because she came to see him only once in jail. The attorney who ultimately represented Skinner by the time he pled guilty and the court sentenced him was the last of several attorneys who represented Skinner in this matter; the record is unclear exactly how many predecessors she had. Skinner merely makes the allegation that counsel came to see him only one time; he offers no explanation why at that stage of the case a single visit with his last attorney was not sufficient. The bare allegation alone is not enough to present a colorable claim of ineffective assistance.

¶16 Skinner also claims his counsel was ineffective when she failed to "ask to see" Skinner's fingerprints found in the victim's home. Skinner does not explain how counsel's "seeing" his fingerprints would have aided in the investigation of his case or preparation of any defense. He has, therefore, failed to state a colorable claim for relief.

¶17 Finally, Skinner argues his counsel was ineffective when she failed to recognize that he had a valid defense based on discrepancies in the various police reports. This was the focus of the petition he filed below. The victim changed aspects

of his story because he was embarrassed that he had on at least two occasions contacted other men and arranged encounters with them. The victim first claimed Skinner broke into his home and attacked him. As police questioned the victim over time, the victim eventually acknowledged he met Skinner in a chat room and arranged for Skinner to come to his home. While counsel could have used the inconsistencies in the victim's story to impeach the victim at trial and/or portray him in an unfavorable light, these inconsistencies are not a valid defense. Regardless, the victim was always consistent with his claim that Skinner attacked the victim in his home, tied him up, and took his property.

¶18 While the petition for review and the reply present other issues, Skinner did not raise those issues in the petition for post-conviction relief he filed below. A petition for review may not present issues not first presented to the trial court, *Bortz*, 169 Ariz. at 577, 821 P.2d at 238; Ariz. R. Crim. P. 32.9(c)(1)(ii), and this Court will not consider arguments or issues first raised in a reply, see *State v. Watson*, 198 Ariz. 48, 51 ¶ 4, 6 P.3d 752, 755 (App. 2000). While Skinner moved for reconsideration and raised some of these new issues, the motion was essentially an entirely new petition that raised a host of new issues in an effort to circumvent the trial court's original ruling, not a request that the court reconsider its original

rulings on the original issues. The trial court declined to address the new issues in the motion for reconsideration and, therefore, those issues are also not properly before this Court.

¶9 Because Skinner failed to present any colorable claims for relief, the trial court did not abuse its discretion when it summarily dismissed the petition for post-conviction relief.

¶10 We grant review and deny relief.

_____/s/_____
RANDALL M. HOWE, Presiding Judge

CONCURRING:

_____/s/_____
SAMUEL A. THUMMA, Judge

_____/s/_____
PATRICIA A. OROZCO, Judge