

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ANTHONY MATTHEW PENA, *Petitioner*.

No. 1 CA-CR 15-0209 PRPC
FILED 6-8-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2009-117226-001
The Honorable Robert E. Miles, Judge *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Anthony Matthew Pena, Florence
Petitioner

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which
Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

STATE v. PENA
Decision of the Court

CATTANI, Judge:

¶1 Anthony Matthew Pena petitions for review from the superior court's summary dismissal of his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 A jury convicted Pena of first degree murder, aggravated assault, and discharge of a firearm at a structure. This court affirmed his convictions and sentences on appeal. *State v. Pena*, 1 CA-CR 12-0575, 2013 WL 4399017 (Ariz. App. Aug. 13, 2013) (mem. decision).

¶3 Pena's petition for post-conviction relief alleged (1) ineffective assistance of counsel, and (2) a Fourth Amendment violation based on his assertion that critical evidence for the State was obtained through an improper search. Pena's ineffective assistance of counsel claim was premised on counsel's alleged failure to investigate a potentially exculpatory witness. But Pena did not provide an affidavit detailing what testimony the witness would have provided or showing that the testimony would probably have changed the outcome at trial. Thus, his generalized and unsupported allegation was not sufficient to establish a colorable claim for relief. *See State v. Borbon*, 146 Ariz. 392, 399-400 (1985).

¶4 Pena raised – and this court rejected – his Fourth Amendment claim on direct appeal. *Pena*, 2013 WL 4399017, at *2-*3, ¶¶ 10-12. As this claim was finally adjudicated on the merits, it is precluded under Arizona Rule of Criminal Procedure 32.2(a)(2).

¶5 Accordingly, we grant review but deny relief.



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