

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ALBERT KARL HEITZMANN, *Petitioner*.

No. 1 CA-CR 15-0362 PRPC
FILED 4-20-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2012-134114-001
The Honorable Pamela S. Gates, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Albert Karl Heitzmann, Phoenix
Petitioner

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in
which Judge Lawrence F. Winthrop and Judge James P. Beene joined.

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T H U M M A, Judge:

¶1 Petitioner Albert Karl Heitzmann seeks review of the superior court’s order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).¹ Absent an abuse of discretion or error of law, this court will not disturb a superior court’s ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Finding no such error, this court grants review but denies relief.

¶2 The State charged Heitzmann with one count of misconduct involving weapons and one count of threatening or intimidating. A jury convicted Heitzmann of misconduct involving weapons, and the court imposed a four-year prison term. Although the jury could not agree on a verdict for the threatening or intimidating charge, Heitzmann was found guilty at a retrial. The court suspended sentence and imposed a three-year term of probation. In two memorandum decisions, this court affirmed Heitzmann’s convictions, sentence and probation grant. *State v. Heitzmann*, No. 1 CA-CR 13-0318, 2014 WL 2768783 (Ariz. App. June 17, 2014) (mem. dec.) (misconduct involving weapons); *State v. Heitzmann*, No. 1 CA-CR 14-0074, 2014 WL 6778806 (Ariz. App. Dec. 2, 2014) (mem. dec.) (threatening or intimidating).

¶3 With respect to his weapons conviction, Heitzmann, proceeding *in propria persona*, timely sought Rule 32 relief in superior court.² He claimed ineffective assistance of trial and appellate counsel, that “[h]is conviction was a violation of a U.S. Supreme Court decision[,]” and actual innocence. Finding Heitzmann raised no colorable claim, the court denied relief, and this timely petition for review followed.

¶4 Heitzmann raises three arguments on review. First, he contends the superior court erred in granting the State’s motion for a 30-day extension to file a response to his Rule 32 petition. This argument fails

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

² After the mandate issued in No. 1 CA-CR 14-0074, Heitzmann sought Rule 32 relief from his threatening or intimidating conviction. The superior court denied relief, and Heitzmann filed a petition for review in No. 1 CA-CR 16-0162 PRPC, which is pending before this court and will be addressed separately.

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as it provides no ground for post-conviction relief. *See* Ariz. R. Crim. P. 32.1 (d-h), 32.2.

¶5 Heitzmann’s assertion that his conviction “violates a U.S. Supreme Court decision” also fails. He does not cite or name any such decision. Moreover, any claim that his conviction was in violation of law is precluded because the argument could have been raised on direct appeal. *See* Ariz. R. Crim. P. 32.2(a)(1). None of the exceptions in Rule 32.2(b) apply.

¶6 Heitzmann’s third argument is improperly presented. Without citation to authority, he contends that his “prohibited possessor status followed from the State violating habe[a]s corpus,” a violation he contends resulted from a lack of evidence at his perjury trial in 2007.³ Issues not first presented to the superior court may not be presented in a petition for review. *State v. Bortz*, 169 Ariz. 575 (App. 1991); Ariz. R. Crim. P. 32.9(c)(1)(ii). Additionally, this court has previously determined that sufficient evidence supported Heitzmann’s perjury conviction. *See Heitzmann*, No. 1 CA-CR 08-0228, 2009 WL 3464289 at ¶ 21.

¶7 For these reasons, this court grants review but denies relief.



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

³ Heitzmann was convicted in 2007 of two counts of misconduct involving weapons, one count of attempted tampering with a witness, and one count of perjury. This court reversed the weapons convictions and sentences, but otherwise affirmed. *State v. Heitzmann*, No. 1 CA-CR 08-0228, 2009 WL 3464289 (Ariz. App. Oct. 27, 2009) (mem. dec.). Heitzmann twice unsuccessfully sought Rule 32 relief from those remaining convictions. This court denied relief on one of his petitions for review, and the other petition for review is pending. *See* 1 CA-CR 11-0578, 1 CA-CR 16-0200.