

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHNNY DOMINGUEZ AMARILLAS, *Petitioner*.

No. 1 CA-CR 15-0643 PRPC
FILED 6-22-2017

Petition for Review from the Superior Court in Maricopa County
No. CR 1995-010527
The Honorable Robert L. Gottsfield, Judge, *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Johnny Dominguez Amarillas, San Luis
Petitioner

MEMORANDUM DECISION

Acting Presiding Judge Peter B. Swann delivered the decision of the court,
in which Judge Maria Elena Cruz and Judge Kent E. Cattani joined.

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S W A N N, Judge:

¶1 Johnny Dominguez Amarillas was convicted of and sentenced for aggravated assault and three counts of armed robbery in 1996, and we affirmed the convictions and sentences on direct appeal. Amarillas now petitions this court for review from the superior court's summary dismissal of a petition for habeas corpus that the court treated as a successive petition for post-conviction relief. We grant review.

¶2 Amarillas argues: (1) the superior court deprived him of a fair trial and the ability to present a complete defense when it denied his motions to sever the counts and to sever his case from that of his codefendant; (2) in-court identifications by witnesses were unduly suggestive; (3) his trial, appellate and prior post-conviction-relief counsel all were ineffective; (4) the superior court erred when it excluded evidence; (5) the state failed to present sufficient evidence of his guilt; and (6) the superior court erred when it treated his petition for writ of habeas corpus as a successive petition for post-conviction relief. Amarillas does not present any of these issues in the context of newly discovered evidence or a significant change in the law. He argues, however, that the Supreme Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), constitutes a significant change in the law that allows him to raise his claims in an untimely fashion.

¶3 We deny relief. First, as to the sixth claim, the superior court properly treated the petition for writ of habeas corpus as a petition for post-conviction relief pursuant to Ariz. R. Crim. P. ("Rule") 32.3. Rule 32.3 provides that if a defendant applies for a writ of habeas corpus in a trial court that has jurisdiction over the defendant and the defendant raises any claim attacking the validity of the conviction or sentence, the court "shall" transfer the matter to the court in which the defendant was convicted or sentenced, and that court "shall" in turn treat the matter as a petition for post-conviction relief pursuant to Rule 32.

¶4 Second, Amarillas could have raised all of his other issues on direct appeal or in a timely prior post-conviction-relief proceeding. With exceptions not applicable here, a claim that a defendant could have raised on direct appeal or in an earlier post-conviction-relief proceeding is precluded. Rule 32.2. Further, *Martinez* is of no aid to Amarillas. *Martinez* held: "Where, under state law, claims of ineffective assistance of trial counsel must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review

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collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.” 566 U.S. at 16. *Martinez* simply means Amarillas can seek habeas corpus relief in federal court based on ineffective assistance of trial counsel if he can first show either that he had no counsel in his first post-conviction-relief proceeding or that counsel in that proceeding was ineffective. *Martinez* does not require a state court to consider all untimely claims raised in post-conviction proceedings.

¶5 For these reasons, we grant review but deny relief.



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