

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

FILED BY CLERK

AUG 31 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0279-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOSE VICENTE MONTIEL,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2000007526

Honorable Jeanne Garcia, Judge

REVIEW DENIED

Jose V. Montiel

Florence
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Jose Montiel seeks review of the trial court's order summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. For the reasons that follow, we deny review.

¶2 Montiel pled guilty in 2000 to second-degree murder and was sentenced to an aggravated twenty-year prison term. He filed a notice of post-conviction relief, and

appointed counsel filed a notice stating he had reviewed the record and “found no grounds” to raise in post-conviction proceedings. Although the trial court granted Montiel leave to file a pro se petition, Montiel did not do so, and the court dismissed the of-right Rule 32 proceeding in November 2001.

¶3 Before initiating the instant proceeding, Montiel sought post-conviction relief on five occasions, arguing that his decision to plead guilty had been involuntary because he did not understand the plea agreement, his attorney had not explained the plea agreement adequately, he should have received a mental health evaluation, and his Rule 32 counsel had been ineffective. The trial court summarily dismissed each proceeding, and Montiel did not seek review of those rulings.

¶4 Montiel then filed a petition for writ of habeas corpus, again claiming his decision to plead guilty had been involuntary because he spoke only Spanish and did not understand the plea agreement, his Rule 32 counsel had been ineffective for failing to raise claims related to his sentence, and his sentence was disproportionate and violated the prohibition against cruel and unusual punishment. The trial court construed Montiel’s petition as a petition for post-conviction relief, *see* Ariz. R. Crim. P. 32.3, and summarily dismissed it, finding his claims precluded pursuant to Rule 32.2.

¶5 On review, Montiel summarily repeats his claims.¹ He does not, however, provide any citation to the record or explain how the authority he cites supports his claims. Nor does he acknowledge, much less address, the trial court’s determination that his claims are precluded because he either did raise them, or could have raised them, in his numerous previous post-conviction proceedings. *See* Ariz. R. Crim. P. 32.2(a)(2), (3).

¹Montiel additionally has filed an affidavit detailing various facts related to his claims. Because this affidavit was not provided to the trial court, we do not consider it. *See* Ariz. R. Crim. P. 32.9(c)(1).

Montiel’s failure to provide adequate citations to the record or provide any relevant legal argument justifies our summary refusal to accept review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must comply with rule governing form of appellate briefs and contain “reasons why the petition should be granted” and either an appendix or “specific references to the record”) and (f) (appellate review under Rule 32.9 discretionary); Ariz. R. Crim. P. 31.13(c)(1)(vi) (briefs must contain argument and supporting authority); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶6 Review Denied.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge