

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

SEP 13 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0297-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ALVIN STEVENSON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007107782001DT

Honorable Janet E. Barton, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery
By Diane Meloche

Phoenix
Attorneys for Respondent

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorney for Petitioner

K E L L Y, Judge.

¶1 Petitioner Alvin Stevenson was convicted after a jury trial of first-degree murder, transportation of marijuana, armed robbery, and possession of marijuana. This court affirmed his convictions and sentences on appeal. *State v. Stevenson*, No. 1 CA-CR

2008-0840 (memorandum decision filed Feb. 11, 2010). In this petition for review, Stevenson challenges the trial court's denial of his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in which he claimed trial counsel had rendered ineffective assistance by failing to object to the questioning of two jurors, and the dismissal of one of the jurors, during deliberations. *See* Ariz. R. Crim. P. 32. We will not disturb the trial court's ruling absent a clear abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Stevenson has not met his burden of establishing such abuse here.

¶2 On appeal Stevenson had argued the trial court erred in dismissing one of the jurors but because Stevenson had not objected, we reviewed only for fundamental error. *Stevenson*, No. 1 CA-CR 2008-0840, ¶¶ 4-12. In this post-conviction proceeding, Stevenson argued counsel's failure to object was prejudicial because this court would have applied a more favorable standard of review in evaluating the argument on appeal. But, as the trial court pointed out in rejecting Stevenson's claim, this court stated in the memorandum decision on appeal there had been no error, "fundamental or otherwise," and the trial court had not abused its discretion when it dismissed the juror. *Id.* ¶ 13. Thus, the trial court correctly concluded in this post-conviction proceeding that the outcome on appeal would have been no different and, consequently, Stevenson's claim of ineffective assistance of counsel was not colorable. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (showing that counsel's performance was deficient and prejudicial required to establish colorable claim of ineffective assistance of counsel).

Stevenson has not persuaded us on review the court abused its discretion in dismissing the petition.

¶3 The petition for review is granted but Stevenson's request for relief is 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