

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

NOV 15 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0302-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JULIAN ADRIAN WYATT,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063253

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Julian Wyatt

Buckeye  
In Propria Persona

ESPINOSA, Judge.

¶1 Following a jury trial, petitioner Julian Wyatt was convicted of first-degree murder and sentenced to life in prison without the possibility of release for twenty-five years. We affirmed his conviction and sentence on appeal. *State v. Wyatt*, No. 2 CA-CR 2008-0274 (memorandum decision filed July 28, 2009). We also denied relief on Wyatt's petition for review from the trial court's denial of his first petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he claimed, *inter*

*alia*, that trial counsel was ineffective by failing to call certain defense witnesses. *State v. Wyatt*, No. 2 CA-CR 2011-0288-PR, ¶ 2 (memorandum decision filed Feb. 8, 2012). Wyatt subsequently filed a second petition for post-conviction relief, which the court denied without conducting an evidentiary hearing. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 On review, Wyatt asserts, as he did in his petition below, that newly discovered evidence showing the fraudulent billing practices of trial counsel’s investigator resulted in counsel’s failure to call a particular defense witness, rendering trial counsel ineffective.<sup>1</sup> To establish a claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below prevailing professional norms and also that there is a reasonable probability the outcome of the case would have been different but for the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶3 In its ruling denying post-conviction relief, the trial court first summarized the procedural history of the case. The court then correctly concluded that Wyatt had not established why he should be permitted to file a successive post-conviction petition, and noted that the only new claim in his petition, the claim now before us on review, was

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<sup>1</sup>To the extent Wyatt intends to raise a claim based on actual innocence for the first time in his petition for review, we do not consider it. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues not first presented to trial court).

precluded and without merit in any event. Based on the record before us, we cannot say the court abused its discretion in dismissing Wyatt's petition for post-conviction relief. The court did so in a detailed ruling that clearly identified the nature of Wyatt's arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court's ruling and see no need to restate it here. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Therefore, although the petition for review is granted, relief is denied.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge