

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

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COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0307-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
SHAD KENDALL KNIGHT,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20070703

Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Isabel G. Garcia, Pima County Legal Defender  
By Robb P. Holmes

Tucson  
Attorneys for Petitioner

ESPINOSA, Judge.

¶1 Petitioner Shad Knight seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “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). Knight has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Knight was convicted of first-degree murder, and the trial court sentenced him to a term of natural life in prison. This court affirmed his conviction and sentence on appeal. *State v. Knight*, No. 2 CA-CR 2008-0127 (memorandum decision filed Aug. 13, 2009). Thereafter, Knight initiated a Rule 32 proceeding, arguing in his petition that trial counsel had been ineffective in (1) not retaining a “qualified forensic podiatrist,” (2) “failing to object to the state’s improper closing argument,” and (3) “interfering with [his] right to testify at trial.” The trial court summarily denied relief on the first two claims, but granted Knight an evidentiary hearing on the third. After the hearing, the court denied relief on that claim as well.

¶3 On review, Knight essentially repeats the arguments made below and contends the trial court abused its discretion in failing to grant relief on his claims. Knight asserts the court “ignored” his argument that he would have received a different standard of review on appeal had trial counsel objected to alleged prosecutorial misconduct in the state’s closing argument. And he maintains the court found this claim precluded and thereby “misapplied the preclusion rule.” But, in its ruling, the court clearly addressed the differences between fundamental and harmless error review and did not find the claim precluded.

¶4 Knight further contends the trial court abused its discretion in denying him relief on his claim that counsel had prevented him from testifying. He essentially asks this court to reweigh the testimony presented at the evidentiary hearing; something we will not do. *See State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993)

(appellate court reviews evidence at post-conviction-relief hearing favorable to sustaining trial court's ruling and defers to trial court in resolving conflicts in evidence); *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988).

¶5 We also reject Knight's claim that the United States Supreme Court's decision in *Rock v. Arkansas*, 483 U.S. 44 (1987), invalidated the principle set forth in *State v. Martin*, 102 Ariz. 142, 147, 426 P.2d 639, 644 (1967), on which the trial court relied. In *Martin*, our supreme court stated, "Clearly when the defendant and his counsel come to the conclusion for any reason that it would be better for the defendant not to testify, the defendant cannot later claim with the benefit of hindsight that the decision to keep him off the stand constituted reversible error." *Id.* *Rock* addressed the specific issue of a state's per se rule excluding all hypnotically refreshed testimony and did not address waiver of one's right to testify. 483 U.S. at 56, 62. And our supreme court has essentially restated the principle articulated in *Martin* in *State v. Prince*: "Because Prince did not invoke his right to testify, he 'cannot now be heard to complain.'" 226 Ariz. 516, ¶ 47, 250 P.3d 1145, 1160 (2011), quoting *State v. Allie*, 147 Ariz. 320, 328, 710 P.2d 430, 438 (1985) (citing *Martin* for the principle that the right to testify is subject to defendant "making his desire to testify known at trial, not as an afterthought").

¶6 As to the remainder of Knight's arguments, the trial court correctly identified and resolved his claims in a manner permitting this court to review and determine the propriety of its rulings. No purpose would be served by restating the court's rulings in their entirety; instead we adopt them. See *State v. Whipple*, 177 Ariz.

272, 274, 866 P.2d 1358, 1360 (App. 1993). Thus, although we grant the petition for review, 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