

**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
OCT 17 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0363-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CARLOS ALFREDO COCOM-TAX,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007008770002DT

Honorable Joseph C. Welty, Judge

REVIEW GRANTED; RELIEF DENIED

Carlos Cocom-Tax

Safford
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Carlos Cocom-Tax 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). Cocom-Tax has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Cocom-Tax was convicted of human smuggling and three counts of kidnapping. The trial court sentenced him to presumptive, concurrent, 10.5-year sentences on the kidnapping convictions and a presumptive, concurrent 2.5-year sentence on the human smuggling conviction. His convictions and sentences were affirmed on appeal. *State v. Cocom-Tax*, No. 1 CA-CR 09-0925, ¶ 15 (memorandum decision filed Feb. 4, 2010).

¶3 Thereafter, Cocom-Tax initiated a post-conviction relief proceeding, and his appointed counsel filed a notice stating he had “reviewed the transcripts and all relevant documents in th[e] matter” and was “unable to discern any colorable claim upon which to base a Petition for Post-Conviction Relief.” In his pro se petition, however, Cocom-Tax argued the trial court had erred in aggravating his sentence based on the aggravating circumstance of pecuniary gain when that circumstance had not been found by a jury beyond a reasonable doubt and that his appellate and Rule 32 counsel had been ineffective in failing to raise the claim. Approximately a month after filing his reply to the state’s response to his petition, Cocom-Tax also filed a motion to amend his petition to add an additional claim that his right against double jeopardy had been violated. *See* U.S. Const. amend. V. Concluding that Cocom-Tax’s claims either were precluded or without merit, the court summarily denied relief and denied the motion to amend.

¶4 On review, Cocom-Tax argues (1) his sentencing claim should not be precluded because he did not “knowingly, voluntarily and intelligently” waive the claim; (2) the trial court should not have “brushed aside” his claim of ineffective assistance of counsel because he was prejudiced by the court’s consideration of pecuniary gain as an aggravating circumstance and he had presented colorable claims of ineffective assistance of appellate and Rule 32 counsel; and (3) the court abused its discretion in denying his motion to amend his petition.

¶5 With respect to Cocom-Tax’s argument that his sentencing claim is not subject to preclusion because he did not personally waive it at trial or on appeal,¹ the comment to Rule 32.2 explains that “some issues not raised at trial, on appeal, or in a previous collateral proceeding may be deemed waived without considering the defendant’s personal knowledge, unless such knowledge is specifically required to waive the constitutional right involved,” in other words, if the “claim is of sufficient constitutional magnitude” to preclude waiver. *See also Swoopes*, 216 Ariz. 390, ¶¶ 21, 28, 166 P.3d at 951, 954 (general claim that right to fair trial was violated insufficient to avoid preclusion). Cocom-Tax has not explained why his claim is of sufficient constitutional magnitude to require his personal waiver. *See Ariz. R. Crim. P. 32.9(c)(1)(iv)*.

¹Cocom-Tax first made this assertion in his reply to the state’s response to his petition for post-conviction relief in which the state asserted he had waived his sentencing claim.

¶6 Even were it not precluded, however, we agree with the trial court that the claim is without merit. In its thorough, well-reasoned minute entry, the court identified the claims Cocom-Tax raised, and resolved them correctly and in a manner permitting any court to review and determine the propriety of the resolution. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by restating the court’s ruling in its entirety. *See id.* Rather, we adopt the ruling.

¶7 Finally, we are unpersuaded by Cocom-Tax’s challenge to the trial court’s ruling on his motion to amend his petition. Rule 32.6(d) allows amendment to a petition only “upon a showing of good cause.” We review a court’s determination of whether good cause has been shown for an abuse of discretion. *See State v. Rogers*, 113 Ariz. 6, 8, 545 P.2d 930, 932 (1976) (“sound discretion vested within the trial court” in relation to amendment). In this case we cannot say the court abused its discretion. Cocom-Tax claimed that, based on his lack of access to legal materials while incarcerated, his speaking “an unusual dialect of Spanish,” and his lack of “legal assistance,” his failure to raise the double-jeopardy claim he wished to add “was occasioned by agents and employees of the . . . State of Arizona” who had “deni[ed] . . . him the means . . . of discovering it.” But, as noted above, Cocom-Tax was represented by counsel and had already raised some legal issues in his pro se petition, apparently based on other advice he had received while incarcerated. At base, his assertion was merely that someone else had advised him of a new possible claim; Cocom-Tax cites no authority to suggest that this constitutes good cause within the meaning of Rule 32.6(d).

¶8 For all the above reasons, 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