

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 30 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0364-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOSE LUIS TORRES-PAIS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008166449002SE

Honorable Connie Contes, Judge

REVIEW GRANTED; RELIEF DENIED

Jose Luis Torres-Pais

Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Jose Torres-Pais seeks review of the trial court's order, entered after an evidentiary hearing, denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Torres-Pais has not met his burden of establishing such abuse here.

¶2 Torres-Pais pled guilty to kidnapping and was sentenced to a 13.5-year prison term. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and had been “unable to find any claims for relief to raise in post-conviction relief proceedings.” Torres-Pais filed a pro-se petition for post-conviction relief, arguing he was innocent of kidnapping but that his court-appointed interpreter had advised him not to tell his counsel or the court anything. Thus, he claimed the interpreter had “hindered” his communication with his counsel and the court about his case during which he would otherwise have conveyed the identity of the person who made recorded threatening telephone calls to the victim’s mother. He reasoned, therefore, that the recording of those telephone calls constituted newly discovered evidence and that his decision to plead guilty was not voluntary. After an evidentiary hearing, the trial court denied relief, concluding that it found credible the interpreter’s testimony that she had “only serv[ed] as a conduit between the attorney and the Defendant at the jail and during court proceedings and ‘never for a moment’ engaged in direct conversation” with him.

¶3 On review, Torres-Pais repeats his claims but does not address the trial court’s finding that his interpreter had acted appropriately. We do not reweigh the evidence on review and instead defer to the court’s credibility determinations and will not disturb its factual findings unless they clearly are erroneous. *See State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993); *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988). The evidence amply supports the court’s ruling. In light of

the court’s factual finding, Torres-Pais does not provide any basis to conclude his plea was not voluntary or that his communication with counsel or the court was hindered.¹

¶4 And, although the trial court did not expressly discuss Torres-Pais’s claim of newly discovered evidence, we find no error in its implicit rejection of that claim. Torres-Pais does not identify anything that would qualify as newly discovered evidence pursuant to Rule 32.1(e). “Evidence is not newly discovered unless it was unknown to the trial court, the defendant, or counsel at the time of trial” *State v. Saenz*, 197 Ariz. 487, ¶ 13, 4 P.3d 1030, 1033 (App. 2000). The record affirmatively shows his counsel was aware of the recorded telephone calls.

¶5 For the reasons stated, although review is granted, relief is denied.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

¹To the extent Torres-Pais suggests his plea was involuntary because he did not understand “what he was . . . pleading to,” he did not raise this argument below and we do not address it. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider for first time on review issues not presented to, or ruled on by, trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review).