

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 2012-0386-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ESTEBAN PEREZ-VASQUEZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008115234004DT

Honorable Barbara L. Spencer, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Lisa Marie Martin

Phoenix
Attorneys for Respondent

Esteban Perez-Vasquez

Kingman
In Propria Persona

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

¶1 Petitioner Esteban Perez-Vasquez seeks review of the trial court's order summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz.

R. Crim. P.¹ 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). Perez-Vasquez has not met his burden of establishing such abuse here.

¶2 Perez-Vasquez pled guilty to kidnapping and theft by extortion and was sentenced to slightly mitigated, concurrent, 8.5-year prison terms for each offense. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating she was “unable to find any claims for relief to raise in post-conviction relief proceedings.” After Perez-Vasquez failed to file a pro se petition, the trial court dismissed the Rule 32 proceeding.

¶3 Perez-Vasquez then filed another notice of post-conviction relief claiming pursuant to Rule 32.1(f) that his failure to file his petition was not his fault because he speaks no English, had been moved frequently, and his appointed counsel had not given him his case file. The trial court, noting that Rule 32.1(f) did not apply, nonetheless concluded that Perez-Vasquez could file a second petition “for the limited purpose of alleging that post-conviction relief counsel was ineffective and did not present [his] claim properly” and appointed counsel to evaluate that claim. Appointed counsel filed a notice

¹Perez-Vasquez states in his petition for review that he seeks review by our supreme court of “the d[e]cision of the Arizona Court of Appeals . . . entered 11-04-2011.” We have not made any previous rulings in this case, and the date Perez-Vasquez provides in his petition is the date of the trial court’s decision. We therefore construe his petition as a petition for review of that decision brought pursuant to Rule 32.9(c).

stating she had “investigated [Perez-Vasquez’s] case for any and all colorable claims and has determined that no colorable claim can be raised on [his] behalf.”

¶4 Perez-Vasquez then filed a pro se petition for post-conviction relief arguing his trial counsel had been ineffective because he told Perez-Vasquez he could face an eighty-year sentence if convicted at trial and would “just get probation, and get deported” if he pled guilty. He further asserted trial counsel had not investigated his case adequately and, had he done so, would have discovered that Perez-Vasquez had committed the offenses under duress. He additionally argued in his reply to the state’s response that he had been provided inadequate translation services at court proceedings and in communication with his trial counsel. The trial court summarily denied relief. The court concluded Perez-Vasquez had been informed of the possible sentences he could face following conviction at trial or upon pleading guilty and there was no support for his contention that he had not been provided adequate translation services nor that his counsel’s investigation had been inadequate.

¶5 On review, Perez-Vasquez largely repeats the claims made below and, for the first time, provides exhibits he purports support those claims. Even if we found his arguments on review persuasive, Perez-Vasquez’s attempt to present these claims adequately for the first time on review comes too late. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues . . . decided by the trial court”); *cf.* *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues in petition for review that “have obviously never been presented

to the trial court for its consideration”). The purpose of a petition for review is to allow this court to “review . . . the actions of the trial court,” Ariz. R. Crim. P. 32.9(c), and for the petitioner to identify legal or factual errors made by that court, not to expand upon arguments made inadequately below.

¶6 Perez-Vasquez identifies no error in the trial court’s rejection of his claims. We have reviewed the trial court’s ruling, and we conclude the court did so correctly in a thorough, well-reasoned minute entry which we accordingly adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has ruled correctly on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶7 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/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.