

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 2012-0389-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
MARTIN SARMIENTO ADRIAN,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008152002001DT

Honorable Lisa M. Roberts, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_

Martin S. Adrian

Florence  
In Propria Persona

\_\_\_\_\_

ESPINOSA, Judge.

¶1 Petitioner Martin Adrian seeks review of the trial court's order summarily dismissing his successive 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). Adrian has not met his burden of establishing such abuse here.

¶2 Adrian was convicted after a jury trial of possession of marijuana, possession of drug paraphernalia, and misconduct involving weapons and was sentenced to presumptive, concurrent prison terms, the longest of which was ten years. His convictions and sentences were affirmed on appeal. *State v. Adrian*, No. 1 CA-CR 09-0259 (memorandum decision filed Sep. 2, 2010).

¶3 Adrian filed a notice of post-conviction relief stating he was “waiv[ing] counsel,” followed by a petition for post-conviction relief claiming he was not competent to stand trial, a search had been improper because he did not live in the searched residence, and he was actually innocent because “no reasonable juror would [have found him] guilty without the illegally seized evidence.” He additionally claimed that the state had prosecuted him in “bad faith” due to the lack of proper evidence and that his trial counsel was ineffective in failing to raise those claims. The trial court summarily dismissed Adrian’s petition, and he did not seek review of that ruling.

¶4 Adrian filed a successive notice of post-conviction relief and appointed counsel filed a notice stating she had reviewed the record but was “unable to find a tenable issue to submit to the court pursuant to Rule 32.” In the pro se petition that followed, Adrian again claimed he did not live at the searched residence and additionally asserted he “was not given the chance to a fair trial,” had not been “read [his] [rights],” and had been “found guilty with no good facts to find [him] guilty” due to the lack of fingerprint or DNA<sup>1</sup> evidence. The trial court summarily dismissed his petition, concluding Adrian had not presented “a colorable claim for post[-]conviction relief.”

¶5 On review, Adrian repeats his claims that he did not live at the searched residence and that the evidence was insufficient in light of the lack of fingerprint or DNA

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<sup>1</sup>Deoxyribonucleic acid.

evidence. These claims plainly are precluded because they either were raised or could have been raised on appeal or in his previous Rule 32 proceedings. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). In any event, Adrian does not support these claims with evidence or citation to the record or authority. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain “reasons why the petition should be granted” and “specific references to the record”); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002).

¶6 For the reasons stated, review is granted but 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