

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

DEC 27 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0391-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JORGE ERNESTO MADUEÑO,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200401846

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

\_\_\_\_\_  
Jorge Ernesto Madueño

\_\_\_\_\_  
Florence  
In Propria Persona

\_\_\_\_\_  
E S P I N O S A, Judge.

¶1 Jorge Madueño petitions this court for review of the trial court's order summarily denying relief in his successive post-conviction relief proceeding brought 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).

¶2 Madueño pled guilty to second-degree murder and, on June 13, 2006, was sentenced to a mitigated, thirteen-year prison term with 167 days of presentence incarceration credit. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating she could “find no colorable claims pursuant to Rule 32.” Madueño did not file a pro se petition, and the trial court summarily dismissed the Rule 32 proceeding.

¶3 In March 2012, Madueño filed a “Re-Sentencing Memorandum” in which he claimed the Arizona Department of Corrections (ADOC) had calculated his release date as being December 18, 2018, but, because he had been arrested on December 14, 2004, he should be released on December 14, 2017, instead. He also provided a list of what he described as “pertinent facts omitted” that he claimed “would have had a substantial outcome during sentencing procedure,” including that he was a “responsible husband and father with no prior criminal history” and that the victim was a “career criminal.” The trial court designated that filing as a successive petition for post-conviction relief and ordered Madueño to file, within thirty days, a notice of post-conviction relief “if he asserts . . . that he is not precluded from filing a successive petition and is requesting the appointment of counsel.”

¶4 Madueño filed a notice of post-conviction relief requesting that counsel be appointed and raising a claim of newly discovered evidence purportedly relevant to his sentence and additionally asserting his trial counsel had been ineffective in failing to present that evidence. He further claimed amendments to Arizona’s self-defense statute

constituted a significant change in the law entitling him to relief. The trial court summarily dismissed the notice.

¶5 Madueño filed a “motion to reconsider” stating the trial court had not addressed his claim that his sentence had not been properly calculated. The court agreed it had not addressed that claim in its ruling but concluded Madueño’s sentence had been imposed properly and his release date had been calculated correctly by ADOC. Madueño then moved for rehearing, asserting the improper calculation of his sentence violated his plea agreement and he was entitled to an evidentiary hearing on that claim. The court denied the motion for rehearing, and this petition for review followed.

¶6 In his petition for review, Madeuño repeats his claim that his release date has been miscalculated and asserts the trial court erred in failing to appoint him counsel.<sup>1</sup> He requests that this court review his filings below and instruct the trial court to order “specific performance” of the sentence provided for in his plea agreement. But Madueño’s attempt to incorporate by reference his filings below is not permitted by our rules. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv). And his failure to comply with our rules or to provide meaningful argument in his petition for review would itself justify our summary refusal to grant review. *See 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

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<sup>1</sup>Madueño does not assert the trial court erred in rejecting the other claims raised in his notice below.

governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, 46 P.3d 1067 (2002).

¶7 In any event, we agree with the trial court that ADOC has calculated correctly Madueño's release date based on the sentence imposed and the 167 days of presentence incarceration credit found by the court. The essence of Madueño's claim instead appears to be that he was entitled to additional credit. That claim, however, is precluded because it could have been raised in his first Rule 32 proceeding but was not. *See* Ariz. R. Crim. P. 32.2(a)(3). Madueño has not identified, either below or in his petition for review, any exception to Rule 32.2(a) applicable to the claim. Thus, the court did not err in summarily rejecting it. Nor has Madueño cited any authority suggesting he was entitled to have counsel appointed; we therefore do not address that argument. *See Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

¶8 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