

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

PATRICIO ENRIQUE MARTINEZ,
Petitioner.

No. 2 CA-CR 2014-0298-PR
Filed November 17, 2014

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20091124001

The Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Offices of Thomas Jacobs, Tucson

By Thomas Jacobs

Counsel for Petitioner

STATE v. MARTINEZ
Decision of the Court

MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 Petitioner Patricio Martinez 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). Martinez has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Martinez was convicted of molestation of a child under twelve years of age and sentenced to a presumptive prison term of seventeen years. This court affirmed his conviction and sentence on appeal. *State v. Martinez*, No. 2 CA-CR 2011-0148, ¶ 13 (memorandum decision filed Aug. 29, 2012).

¶3 Martinez thereafter initiated a proceeding for post-conviction relief, arguing in his petition that he had received ineffective assistance of trial counsel based on counsel's failure to move for a mistrial after a witness for the state made an improper comment about Martinez being in prison and on counsel's failure to present available mitigating evidence at sentencing. The trial court summarily denied relief, and this petition for review followed.

¶4 On review, Martinez repeats his arguments made below and contends the trial court abused its discretion in concluding trial counsel's decision not to seek a mistrial was a tactical decision and in determining that trial counsel could not have been expected to obtain the mitigating evidence presented in the Rule 32 proceeding. We conclude, however, that the trial court clearly and correctly identified and addressed Martinez's claims, and we therefore adopt

STATE v. MARTINEZ
Decision of the Court

its ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has ruled on issue correctly “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” that analysis).

¶5 Although we grant the petition for review, we deny relief.