

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROBERT CARRASCO GAMEZ,
Petitioner.

No. 2 CA-CR 2015-0324-PR
Filed January 26, 2016

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County
No. CR20020991
The Honorable Stephen C. Villarreal, Judge

REVIEW GRANTED; RELIEF DENIED

Robert C. Gamez, Buckeye
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Robert Gamez seeks review of the trial court’s order summarily dismissing his untimely and successive notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Gamez has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Gamez was convicted of two counts each of attempted first-degree murder, aggravated assault, and endangerment. The trial court sentenced him to concurrent and consecutive prison terms totaling forty-six years. We affirmed his convictions and sentences on appeal. *State v. Gamez*, No. 2 CA-CR 2003-0201 (memorandum decision filed Feb. 28, 2006). Before this proceeding, Gamez has unsuccessfully sought post-conviction relief on at least three occasions. *See State v. Gamez*, No. 2 CA-CR 2013-0073-PR (memorandum decision filed Sept. 16, 2013) (providing history); *see also State v. Gamez*, No. 2 CA-CR 2011-0308-PR (memorandum decision filed Jan. 27, 2012).

¶3 In July 2015, Gamez filed a notice of post-conviction relief claiming, he was actually innocent because there was “significant impeachment evidence” not presented to the jury due to the state’s “willful[] conceal[ment].” The trial court summarily dismissed that notice, observing Gamez had not sufficiently explained, as required by Rule 32.2(b), why he had not raised the claim in a prior proceeding despite having previously raised arguments based on the state’s alleged concealment of exculpatory evidence. Gamez then filed a motion for reconsideration and a

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motion requesting discovery, both of which the court denied. This petition for review followed.

¶4 On review, Gamez asserts he is entitled to an evidentiary hearing. His argument, however, appears to center on the trial court's ruling in one of his previous proceedings. He asserts the court failed to address his argument that the state had withheld exculpatory evidence. But any error in the court's determination in a previous proceeding cannot be challenged by filing a new post-conviction notice. *See* Ariz. R. Crim. P. 32.1, 32.9(c). And Gamez does not address the court's determination that he failed to adequately explain why he did not raise his claim of actual innocence in an earlier proceeding. *See* Ariz. R. Crim. P. 32.2(b).

¶5 Accordingly, we grant review but deny relief.