

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JESUS LANDEROS,
Petitioner.

No. 2 CA-CR 2016-0383-PR
Filed January 10, 2017

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NOT FOR PUBLICATION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 Greenlee County
No. CR201500045
The Honorable Monica L. Stauffer, Judge

REVIEW DENIED

COUNSEL

Derek D. Rapier, Greenlee County Attorney
By Jeremy O. Ford, Chief Deputy County Attorney, Clifton
Counsel for Respondent

Jesus Landeros, Eloy
In Propria Persona

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MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 Jesus Landeros seeks review of the trial court’s summary dismissal of 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). Because Landeros has not complied with Rule 32.9, we deny review.

¶2 Pursuant to a plea agreement, Landeros was convicted of attempted possession or use of a dangerous drug for sale, a non-dangerous, non-repetitive offense. The court sentenced Landeros to an aggravated term of 8.75 years in prison.

¶3 Nine months later, Landeros filed a notice of post-conviction relief and a “Motion for a Delayed Rule 32 Proceeding” in which he alleged his failure to file a timely of-right notice of post-conviction relief “was without fault on [his] part,” because he speaks little English and “his attorney never informed him about his rights regarding Post-Conviction Relief.” *See* Ariz. R. Crim. P. 32.1(f).¹ The trial court appointed counsel, who reviewed the record and notified the court that he could find no “meritorious or colorable claims . . . to raise in post-conviction relief proceedings.” Landeros then filed a pro se petition in which he alleged his trial counsel had assured him

¹“Grounds for relief” under Rule 32 include, “The defendant’s failure to file a notice of post-conviction relief of-right or notice of appeal within the prescribed time was without fault on the defendant’s part.” Ariz. R. Crim. P. 32.1(f).

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he would “receive no more than” a four-year prison sentence and had thereby rendered ineffective assistance.

¶4 The trial court dismissed Landeros’s petition for post-conviction relief, finding his challenge to his plea proceedings untimely and without merit. Rejecting Landeros’s argument that he was entitled to a delayed petition because his attorney had not informed him of Rule 32’s deadlines, the court noted, “Landeros heard his rights explained to him at sentencing and was provided written notice in English and Spanish following sentencing.” In addition, as a separate ground for dismissal, the court found Landeros’s claim of ineffective assistance “contradicted by the record,” noting that the sentencing range provided by his plea agreement “was made very clear” to Landeros, who acknowledged his understanding of those terms at his change-of-plea hearing.² This petition for review followed.

¶5 Landeros’s petition for review contains no description of the issues decided by the trial court or facts material to our consideration of those issues, and he does not explain how the court abused its discretion in rejecting his claims, as required by Rule 32.9(c)(1). To the extent we are able to follow his arguments, Landeros appears to assert new claims that were not addressed by the trial court and so are not properly before us on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review to contain issues “decided by the trial court . . . which the defendant wishes to present to the appellate court for review”); *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

²Landeros’s plea agreement, prepared in both English and Spanish, specified the full range of sentences available for a first, class three felony offense, which spans a two-year mitigated term to an 8.75-year aggravated term. *See* A.R.S. § 13-702(D). The agreement also provided, “The State and Defendant agree that the Defendant will serve a minimum of 4 years in the Arizona Department of Corrections.” An interpreter was present at both the change-of-plea and sentencing hearings.

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presented to the trial court for its consideration”). Landeros’s failure to comply with Rule 32.9 justifies our summary refusal to grant review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain “reasons why the petition should be granted” and either appendix or “specific references to the record”), 32.9(f) (appellate review under Rule 32.9 discretionary); *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, ¶ 10, 46 P.3d 1067, 1071 (2002); *cf. State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on appellate review).

¶6 Accordingly, review is denied.