

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

AUG 12 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0103-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
HUMBERTO DE LA OSSA MORENO,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20020139

Honorable Hector E. Campoy, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Humberto D. Moreno

Hinton, OK  
In Propria Persona

ECKERSTROM, Judge.

¶1 After a jury trial was held in his absence, Humberto Moreno was convicted of aggravated driving under the influence of an intoxicant and driving with an alcohol concentration of .10 or more, both while his license was suspended, revoked, or restricted. After he was apprehended some years later, the trial court sentenced him to

partially mitigated, enhanced prison terms. We affirmed his convictions and sentences on appeal. *State v. Moreno*, No. 2 CA-CR 2006-0199 (memorandum decision filed Mar. 23, 2007). He now seeks review of the trial court's order denying his pro se petition for post-conviction relief, filed after appointed counsel avowed he had found no issues to raise in the post-conviction proceeding.

¶2 In its minute entry order denying Moreno's petition, the trial court identified his claims, noting they were comprised essentially of allegations of ineffective assistance of counsel and newly discovered evidence. The court noted that, at the heart of these claims, was Moreno's assertions that he suffers from post-traumatic stress disorder as a result of his service during the Vietnam War and that this fact should have been raised as an affirmative defense or as a basis for further mitigation of his sentences. He also challenged the propriety of the enhancement of his sentences based on his having two historical prior felony convictions.

¶3 The trial court correctly denied relief on these claims in its clear, thorough order, which we adopt here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (observing written decision rehashing trial court's comprehensive orders serves no useful purpose). In reviewing the court's order, we will not consider documents Moreno apparently did not present to the trial court but which he has attached to his petition for review. *See Ariz. R. Crim. P. 32.9(c)(1)(ii)* (petition for review shall contain "[t]he issues which were decided by the trial court and which the defendant wishes to present" for review); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider issues raised for first time in petition for

review and never presented to trial court); *see also State v. Zuck*, 134 Ariz. 509, 512, 658 P.2d 162, 165 (1982) (refusing to consider affidavits of counsel attached to petition for review to supreme court “as an attempt to create new evidence”).

¶4 Moreno has not sustained his burden of establishing the trial court abused its discretion in determining whether post-conviction relief is warranted. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (appellate court will not disturb trial court’s ruling on petition for post-conviction relief absent abuse of discretion). Accordingly, the petition for review is granted, but relief is denied.

*/s/ Peter J. Eckerstrom*

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PETER J. ECKERSTROM, Judge

CONCURRING:

*/s/ Garye L. Vásquez*

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GARYE L. VÁSQUEZ, Presiding Judge

*/s/ Virginia C. Kelly*

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VIRGINIA C. KELLY, Judge