

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

JUN 30 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0080-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOSE ORLANDO RENTERIA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20073294

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Jose O. Renteria

San Luis
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Jose Renteria seeks review of the trial court’s order summarily dismissing his proceeding for post-conviction relief, initiated pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the trial court’s ruling “absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Renteria has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Renteria was convicted of second-degree murder. The trial court imposed a partially aggravated sentence of eighteen years’ imprisonment. Renteria thereafter initiated a Rule 32 proceeding and the court appointed counsel who filed a notice stating he had reviewed the matter and “was unable to find any claims for relief to raise in Rule 32 post-conviction proceedings that [Renteria] wished to pursue.” Counsel further stated he had “informed [Renteria] of his right to file an *in propria pe[rsona]* Rule 32 petition” and asked that the court grant Renteria time to submit such a petition. The court granted Renteria forty-five days to do so and when he failed to file a petition or request an extension within the time allowed, the court summarily dismissed the proceeding in September 2010.

¶3 In January 2011,¹ Renteria filed a pro se “motion to vacate order of dismissal and to reinstate proceedings.” In the motion he alleged Rule 32 counsel had not sent him “any of the transcripts or instruments of record” and he had therefore been “unable to conduct his own review.” He stated he had received the record of his case

¹Renteria dated this document January 15, 2011. It was filed in the superior court on February 14, 2011. But the trial court ruled on the motion on January 25, 2011, suggesting the court had received the document before it was file stamped by the clerk’s office. The court filed a second ruling on the motion in February after receiving another copy of the motion, noting the motion was the same as what it had ruled on in January.

from counsel in December and after examining it had “formulated some nebulous ideas which, if he is given a chance to research them, may be worthy of presenting to the court for review.” The trial court denied the motion, noting Renteria had not requested an extension of time despite “numerous opportunities” to do so.

¶4 Renteria then petitioned this court for review, again asserting that if given time he could develop his ideas, which might then merit relief. The petition, although signed by Renteria, was “ghost-written” by another inmate who explained:

The Petitioner is a citizen of Mexico whose grasp of the English language is considerably less than what is required to understand the Arizona Rules of Criminal Procedure and how Arizona’s criminal justice system works.

The instant Petition for Review is being ghost-written for the Petitioner by a fellow inmate who is a native-born United States citizen, whose command of the English language is far greater than that of the Petitioner, and who, although unschooled in the law, is far more capable of understanding the courts’ rules.

¶5 Even if we assume this inmate is acting in an interpretive capacity for Renteria rather than engaging in the unauthorized practice of law on his behalf, Renteria is not entitled to relief. Rule 32.4(c)(2) provides that after counsel in an of-right proceeding files a notice stating that he or she has been unable to find any colorable claims to raise, “the court shall extend the time for filing a petition by the defendant in propria persona” by forty-five days “from the date the notice is filed. Any extensions beyond the [forty-five] days shall be granted only upon a showing of extraordinary circumstances.” Although Renteria points to counsel’s failure to provide him timely with a copy of the record in his case as a reason for his inability to identify possible grounds

for relief and file a petition, he presents no explanation for his failure to request an extension of time in which to file such a petition.

¶6 The record before us supports the trial court’s conclusion that Renteria simply failed to request an extension despite opportunity to do so. Rule 32 counsel stated in his notice that he had informed Renteria of his right to file a pro se petition and had provided Renteria with a copy of Rule 32.4(c)(2). And the court’s order granting Renteria time to file a petition was mailed to him, indicating the date by which the petition was due. In the absence of even the assertion of “extraordinary circumstances,” we cannot say the trial court abused its discretion in dismissing the proceeding. Therefore, although we grant the petition for review, we deny relief.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Presiding Judge

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Judge