

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

DAVID JASON HARPER, *Petitioner*.

No. 1 CA-CR 14-0681 PRPC
FILED 1-31-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2009-148071-001 DT
The Honorable Janet E. Barton, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By E. Catherine Leisch
Counsel for Respondent

David Jason Harper, Kingman
Petitioner Pro Se

MEMORANDUM DECISION

Judge Randall M. Howe delivered the decision of the Court, in which
Presiding Judge Kenton D. Jones and Judge Donn Kessler joined.

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H O W E, Judge:

¶1 David Jason Harper petitions this Court for review from the dismissal of his petition for post-conviction relief. We have considered the petition for review and for the reasons stated, grant review but deny relief.

¶2 After this Court affirmed Harper's convictions and sentences in *State v. Harper*, 1 CA-CR 10-0923 (Ariz. App. Sept. 22, 2011) (mem. decision), Harper petitioned for post-conviction relief, alleging that his counsel provided ineffective assistance by failing to convey a favorable plea offer. The trial court held a hearing on the claim at which both Harper and his initial trial counsel testified. The testimony at the hearing conflicted. After the hearing, the court found trial counsel's testimony that she fully conveyed the plea offer to Harper credible, and denied relief.

¶3 On review, Harper argues that the trial court should have found that his trial counsel failed to properly convey the plea offer to him. Credibility determinations in post-conviction proceedings rest solely with the trial court, *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988), and "it is for the trial court to resolve conflicting testimony . . ." *State v. Alvarado*, 158 Ariz. 89, 92, 761 P.2d 163, 166 (App. 1988). Having resolved the conflicting testimony in favor of Harper's trial counsel, the trial court correctly denied relief.

¶4 Harper also argues that his trial counsel did not properly advise him to accept the favorable plea offer. This issue was not raised in the petition for post-conviction relief filed in the trial court. A petition for review may not present issues not first presented to the trial court. Ariz. R. Crim. P. 32.9(c)(1)(ii); *State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991). Thus, we do not consider Harper's argument. See *State v. White*, 194 Ariz. 344, 354 ¶ 43, 982 P.2d 819, 829 (1999).

¶5 Harper further argues that his post-conviction relief counsel provided ineffective assistance. Nonpleading defendants like Harper, however, "have no constitutional right to counsel in post-conviction proceedings." See *State v. Escareno-Meraz*, 232 Ariz. 586, 587 ¶ 4, 307 P.3d 1013, 1014 (App. 2013). Thus, his claim of ineffective assistance of post-conviction relief counsel is not a cognizable ground for relief in a post-conviction relief proceeding.

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¶6

For the foregoing reasons, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA