

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JERRY KING, JR., *Petitioner*.

No. 1 CA-CR 15-0309 PRPC
FILED 4-13-2017

Petition for Review from the Superior Court in Maricopa County

No. CR2011-007740-002

The Honorable John R. Ditsworth, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix

By Arthur G. Hazelton, Jr.

Counsel for Respondent

Jerry King, Jr., Buckeye

Petitioner

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which
Presiding Judge Peter B. Swann and Judge Donn Kessler joined.

STATE v. KING
Decision of the Court

CATTANI, Judge:

¶1 Jerry King, Jr., petitions for review of the superior court's summary dismissal of his petition for post-conviction relief of right. King drove a vehicle from which two or more of his passengers shot at another vehicle, killing a passenger inside. King pleaded guilty to second degree murder, and the superior court sentenced him to a presumptive term of 16 years' imprisonment.

¶2 King argues that the State misrepresented the facts of the case by telling the court at sentencing that he followed the victim's vehicle after it fled and that his passengers fired more shots at the victim's vehicle at a second location. King further argues that his trial counsel was ineffective when he failed to object to these representations. The superior court denied this claim as precluded for failing to have raised it earlier. *See* Ariz. R. Crim. P. 32.2(a)(3). We disagree to the extent the claim asserts ineffective assistance of counsel, because this proceeding is King's first opportunity to raise such a claim. *See State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002). Nevertheless, we deny relief because the evidence, while at times contradictory, was sufficient to permit the State to present this version of events to the court, and thus an objection by counsel would have been unavailing.

¶3 King also argues that the State failed to disclose evidence and that his counsel failed to inform him of two witness interviews. But King did not raise those issues in his petition for post-conviction relief, and a petition for review may not raise new issues not first presented to the superior court. Ariz. R. Crim. P. 32.9(c)(1)(ii); *State v. Bortz*, 169 Ariz. 575, 577-78 (App. 1991); *see also State v. Swoopes*, 216 Ariz. 390, 403, ¶ 41 (App. 2007) (noting that there is no review for fundamental error in a post-conviction relief proceeding).

¶4 Accordingly, we grant review but deny relief.



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