

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

PAUL THOMAS VALDESPINO, *Petitioner*.

No. 1 CA-CR 15-0770 PRPC
FILED 8-29-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-149258-001
The Honorable M. Scott McCoy, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By David R. Cole
Counsel for Respondent

Paul Thomas Valdespino, San Luis
Petitioner

MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in
which Judge Jon W. Thompson and Judge Paul J. McMurdie joined.

STATE v. VALDESPINO
Decision of the Court

CATTANI, Judge:

¶1 Paul Thomas Valdespino petitions for review of the superior court's summary dismissal of his second petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 A jury found Valdespino guilty of misconduct involving weapons, and the superior court sentenced him to 12 years' imprisonment. This court affirmed his conviction and sentence on direct appeal. *State v. Valdespino*, 1 CA-CR 12-0724, 2014 WL 730134 (Ariz. App. Feb. 25, 2014) (mem. decision). Valdespino, with assistance of counsel, thereafter filed a first petition for post-conviction relief asserting ineffective assistance of trial counsel. The superior court dismissed that proceeding for failure to present a colorable claim for relief, and this court granted review but denied relief. *See State v. Valdespino*, 1 CA-CR 15-0333 PRPC, 2017 WL 1458721 (Ariz. App. Apr. 25, 2017) (mem. decision).

¶3 Valdespino then filed a second petition for post-conviction relief asserting, as relevant here, ineffective assistance of post-conviction relief counsel in his first Rule 32 proceeding. The superior court summarily dismissed the second petition, and this petition for review followed.

¶4 We deny relief. Valdespino argues in general terms that counsel who represented him in his first post-conviction relief proceeding was ineffective. But ineffective assistance of post-conviction relief counsel is a cognizable claim only if counsel provided representation in an of-right post-conviction relief proceeding. *State v. Pruett*, 185 Ariz. 128, 130-31 (App. 1995); *cf. State v. Krum*, 183 Ariz. 288, 291-92 (1995). Because Valdespino's conviction and sentence resulted from a jury trial, his first post-conviction relief proceeding was not an of-right proceeding, *see* Ariz. R. Crim. P. 32.1, so his claim of ineffective post-conviction counsel is not cognizable.

¶5 Accordingly, we grant review but deny relief.



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