

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JASON ARMAIN ROBINSON, *Petitioner*.

No. 1 CA-CR 16-0606 PRPC
FILED 8-24-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-007829-003
The Honorable James P. Beene, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Jason Armain Robinson, Florence
Petitioner

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MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kenton D. Jones and Chief Judge Samuel A. Thumma joined.

D O W N I E, Judge:

¶1 Jason Armain Robinson petitions for review of the superior court's dismissal of his petition for post-conviction relief pursuant to Arizona Rule of Criminal Procedure ("Rule") 32. For the following reasons, we grant review but deny relief.

¶2 Pursuant to a July 31, 2013 plea agreement, Robinson pleaded guilty to four felony offenses: conspiracy to commit illegal control of an enterprise; conspiracy to commit child prostitution; and two counts of money laundering in the second degree. He was sentenced on September 4, 2013. Immediately after the sentencing hearing, Robinson asserted that the prison sentences he received were not consistent with what he had been promised during a settlement conference. The sentencing judge ordered transcripts of the settlement conference and a change of plea hearing.

¶3 After reviewing the transcripts, the court issued a minute entry stating that the transcripts did not indicate that Robinson had been promised shorter prison terms. Nevertheless, the court directed the prosecutor and defense counsel to file statements regarding their recollection of the proceedings and whether any promises had been made to Robinson.

¶4 After reviewing the parties' submissions, the court concluded the sentencing order was final and not subject to modification. However, the court stated it would "grant a Rule 32 (the only relief available in the court's view) and hold an evidentiary hearing" about what occurred at the settlement conference. No evidentiary hearing was held, though, because defense counsel thereafter filed a motion to dismiss the petition for post-conviction relief, appending a statement by Robinson stating that he no longer wished to contest the judgment of guilt or sentence. On March 11, 2014, the court dismissed the petition.

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¶5 More than two years later – on June 27, 2016 – Robinson filed a second petition for post-conviction relief, asserting the same sentencing-related claims. After reciting the pertinent procedural history, the superior court dismissed the petition. The court ruled that the claims in the successive petition were precluded and that Robinson’s voluntary dismissal of his earlier, timely Rule 32 proceeding did not alter that conclusion. Robinson filed a Motion for Rehearing and Reconsideration and, in an attempt to avoid preclusion, alleged that appointed counsel on the first petition for post-conviction relief was ineffective. However, he offered nothing beyond his own assertions to support that claim. The superior court denied Robinson’s motion.

¶6 Absent an abuse of discretion or error of law, this Court will not disturb a trial court’s ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 576–77, ¶ 19 (2012). Any claim that could have been, or was raised in an earlier post-conviction relief proceeding is precluded under Rule 32.2(a).

¶7 Robinson’s petition for review again asserts ineffective assistance of post-conviction relief counsel. Once again, though, he has not adequately supported this claim. The burden is on a petitioner seeking post-conviction relief to demonstrate ineffective assistance of counsel – a showing that “must be that of a provable reality, not mere speculation.” *State v. Rosario*, 195 Ariz. 264, 268, ¶ 23 (App. 1999). The petitioner must demonstrate that defense counsel’s representation “fell below that of the prevailing objective standards” and that “but for counsel’s unprofessional errors, the outcome of the appeal would have been different.” *Id.* Robinson has not carried his burden of proof. Furthermore, the superior court properly dismissed his 2016 petition on preclusion grounds. *See* Rule 32.2(a).

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CONCLUSION

¶8

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



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