

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

APR 19 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0491-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
PHILLIP MUSGROVE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20074333

Honorable Howard Fell, Judge Pro Tempore

REVIEW DENIED

Phillip Musgrove

Tucson
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Phillip Musgrove seeks review of the trial court’s order denying in part his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 After a jury trial, Musgrove was convicted of two counts of manslaughter, three counts of aggravated assault with a dangerous instrument, three counts of aggravated assault causing serious physical injury, one count of aggravated criminal damage in an amount of \$10,000 or more, and nineteen counts of endangerment involving a substantial risk of imminent death. The trial court sentenced Musgrove to a combination of consecutive and concurrent prison terms totaling thirty-six years’ imprisonment. On appeal, this court modified the judgment of conviction in relation to the criminal damage count and vacated Musgrove’s sentence on that count, ordering resentencing. *State v. Musgrove*, No. 2 CA-CR 2008-0409, ¶ 36 (memorandum decision filed Jan. 25, 2010). We affirmed Musgrove’s remaining convictions and sentences. *Id.*

¶3 Musgrove thereafter initiated a post-conviction relief proceeding, arguing in his petition that the court’s pronouncement of sentence was unclear as to whether his sentences were to be served consecutively or concurrently, the state introduced insufficient evidence to support his convictions on several of the endangerment counts and trial and appellate counsel were ineffective in failing to object or raise the issue, other endangerment counts should be dismissed “for lack of victim testimony,” the endangerment counts should be dismissed because they were multiplicitous and violated

the prohibition against double jeopardy, and his sentence was a violation of the Eighth Amendment to the United States' Constitution. The trial court summarily denied relief, but granted Musgrove leave to amend his petition as to his claim of sufficiency of the evidence to support two of his convictions for endangerment and related claims of ineffective assistance of counsel. After Musgrove amended his petition, and the state conceded counsel had been ineffective in failing to move for a judgment of acquittal in relation to two of the endangerment counts, the court vacated Musgrove's convictions on those counts.

¶4 Musgrove's petition on review is in large part a direct copy of his reply to the state's answer to his petition for post-conviction relief below and he attempts to incorporate by reference portions of his petition for post-conviction relief. In the remaining few pages, Musgrove merely rephrases his argument that his double jeopardy rights were violated. Musgrove's petition for review contains no description of the issues decided by the trial court or facts material to the consideration of those issues, and he does not explain how the court abused its discretion in finding his claims either precluded or without merit, as required by Rule 32.9(c)(1). Musgrove's failure to comply with Rule 32.9 justifies our summary refusal to grant review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain "reasons why the petition should be granted" and either appendix or "specific references to the record," but shall not "incorporate any document by reference, except the appendices"), (f) (appellate review under Rule 32.9 discretionary); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7

P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶5 For the reasons stated, Musgrove’s petition for review is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge