

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

AUG 27 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0153-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
EDWARD TERRAZAS VILLA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083740

Honorable James E. Marner, Judge

REVIEW GRANTED; RELIEF DENIED

Scott W. Schlievert

Tucson
Attorney for Petitioner

ESPINOSA, Judge.

¶1 Following a jury trial, petitioner Edward Villa was convicted of first-degree murder, third-degree burglary, and unlawful use of a means of transportation. The trial court imposed a term of life imprisonment for the murder and presumptive terms of 2.5 and 1.5 years' imprisonment for the other charges. We affirmed Villa's convictions and sentences on appeal. *State v. Villa*, No. 2 CA-CR 2009-0372 (memorandum decision filed Feb. 9, 2011). In 2012, Villa filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., claiming that *State v. Ferrero*, 229 Ariz. 239, ¶¶ 7 & 14-24, 274 P.3d 509, 511 & 512-14 (2012) (clarifying definition of intrinsic evidence, and addressing when Rule 404(b), Ariz. R. Evid., applies to such evidence), constitutes a significant change in the law that applies to his case and would probably overturn his conviction or sentence. See Ariz. R. Crim. P. 32.1(g). He now seeks review of the court's summary denial of that petition. We will not disturb that ruling unless the court clearly has abused its discretion. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 On appeal, Villa challenged the trial court's rejection of his claim that the items belonging to the victim found in a storage locker he had rented constituted other-act evidence inadmissible under Rule 404(b), Ariz. R. Evid. *Villa*, No. 2 CA-CR 2009-0372, ¶ 31. Finding the state had not proffered the evidence from the storage locker as evidence of "[o]ther crimes, wrongs or acts" under Rule 404(b), we concluded Villa's possession of the victim's property had been properly admitted as relevant evidence of murder. *Id.* ¶¶ 32, 34. In denying his petition for post-conviction relief below, the court thus found

that, absent a significant change in the law, Villa was precluded from raising his claim. *See* Ariz. R. Crim. P. 32.2(a)(2) (defendant precluded from relief based on any ground that has been “[f]inally adjudicated on the merits on appeal”); 32.2(b) (excepting from rule of preclusion claims raised under Rule 32.1(d), (e), (f), (g), and (h)).

¶3 The trial court further concluded that *Ferrero* did not apply retroactively to Villa’s case, not only because his case was final when *Ferrero* was issued, but because our supreme court expressly intended its ruling in *Ferrero* to apply “[h]enceforth.” *Ferrero*, 229 Ariz. 239, ¶ 20, 274 P.3d at 243. Finally, the court concluded that even if *Ferrero* did apply retroactively, “it would not accord Defendant relief. [At trial t]he . . . court noted that the evidence was admissible not as ‘other acts’, but to show motive for the murder and the Court of Appeals upheld the trial court’s ruling.”

¶4 On review, Villa contends the trial court “erroneously admitted evidence of other facts [items belonging to the victim found in the storage locker] . . . that were neither relevant nor properly disclosed under Ariz. R. Evid. 404([b]).” Villa further asserts that he cited “the *Ferrero* case . . . in his Rule 32 Petition . . . and that argument is incorporated herein.” Maintaining he “definitely believes that [the admission of the items belonging to the victim that were found in the storage locker] was such a significant evidentiary issue in the trial that this Rule 32 did present a ‘colorable claim,’” Villa argues he is entitled to an evidentiary hearing.

¶5 However, other than obliquely suggesting that the trial court “should be able to use the *Ferrero* analysis in reviewing the evidence in this homicide case,” Villa

utterly fails to explain why *Ferrero* constitutes a significant change in the law that applies to his case or why the trial court erred by finding his claim precluded in the first instance. Instead, Villa essentially asserts, as he did on appeal, that the challenged evidence was not relevant, a claim that plainly is precluded. *See* Ariz. R. Crim. P. 32.2(a)(2).

¶6 Accordingly, although review is granted, relief is denied.

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

CONCURRING:

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

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge