

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

JUL 16 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0170-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JUSTIN NOEL MENENDEZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2006170717002SE

Honorable David K. Udall, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant

Phoenix
Attorneys for Respondent

Justin Noel Menendez

Safford
In Propria Persona

MILLER, Judge.

¶1 Petitioner Justin Menendez seeks review of the trial court’s order denying 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). Menendez has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Menendez was convicted of attempted burglary and possession of burglary tools. The trial court imposed enhanced, “exceptionally aggravated,” concurrent terms of imprisonment, the longest of which was fifteen years. Menendez’s convictions and sentences were affirmed on appeal. *State v. Menendez*, No. 1 CA-CR 08-1055 (memorandum decision filed Apr. 20, 2010).

¶3 Menendez thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating that she had reviewed the record and was “unable to find a tenable issue to submit . . . pursuant to” Rule 32. In a pro se petition, however, Menendez argued (1) the state had presented evidence at trial that the trial court had ordered precluded, (2) he did not receive a fair trial due to the admission of “circumstantial character evidence,” (3) the court erred in granting a motion to continue made by the state and thereby violated his speedy trial rights, (4) he had received “an excessive sentence of 15 years,” (5) the court had imposed an aggravated sentence “without a jury determination” of aggravating circumstances, and (6) the state failed to present sufficient evidence to sustain his convictions beyond a reasonable doubt. The trial court summarily denied relief.

¶4 On review, Menendez essentially repeats the claims made below and asserts the trial court abused its discretion in denying his petition. Pursuant to Rule 32.2(a)(2) and (3), all claims that were “[f]inally adjudicated on the merits on appeal” or “[t]hat [have] been waived at trial [or] on appeal” are precluded from relief. All of Menendez’s

above claims either were raised or could have been raised on appeal and are therefore precluded. And Menendez has not established that any of the exceptions to preclusion apply. *See* Ariz. R. Crim. P. 32.2(b). Therefore, the trial court did not abuse its discretion in dismissing Menendez's petition. Although we grant the petition for review, relief is denied.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge