

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 2013-0173-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
CHRISTOPHER SILVA CRUZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2010131973001DT

Honorable Susan M. Brnovich, Judge

REVIEW GRANTED; RELIEF DENIED

Christopher Cruz

Kingman
In Propria Persona

ESPINOSA, Judge.

¶1 Christopher Cruz petitions this court for review of the trial court's order summarily denying his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. 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). Cruz has not met his burden of establishing such abuse here.

¶2 Cruz pled guilty to aggravated assault with a deadly weapon or dangerous instrument and was sentenced to a 2.5-year prison term. Cruz filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and found “no basis in fact and/or law for post-conviction relief.” Cruz then filed a pro se petition arguing his trial counsel had been ineffective in failing to interview the victim, a police officer. He additionally claimed that his attorney retained an investigator that was the victim’s former partner, thereby creating a conflict of interest, and that his attorney failed to “pull[]” Cruz’s plea when he requested it. The trial court summarily denied relief.

¶3 On review, Cruz again claims trial counsel should have interviewed the victim, alleging that his statement and those made by “other officers involved” were “not true.” He also repeats his claims that his investigator had a conflict of interest and that his attorney failed to “pull” his plea when asked.

¶4 We agree with the trial court that Cruz has not presented colorable claims. Even assuming counsel fell below prevailing professional norms by declining to interview the victim, Cruz has identified no resulting prejudice. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (to state colorable claim of ineffective assistance, defendant must show counsel’s performance fell below reasonable standards and resulting prejudice). Cruz does not suggest that an interview would have yielded useful evidence in addition to the victim’s statement, or that he would not have accepted the plea had that interview been conducted. Nor has he identified any prejudice resulting from the investigator’s purported conflict of interest. Finally, Cruz identifies nothing that could support a motion to withdraw from his plea. *See Ariz. R. Crim. P. 17.5* (court may permit defendant to withdraw from plea “to correct a manifest injustice”).

¶5 Cruz also states in his petition for review that the victim “should have identified himself as a police officer,” that Cruz “had no intent on harming anyone,” that nobody was harmed during the incident, and that “what happened to [him] was entrapment.” To the extent these statements can reasonably be interpreted as a claim of actual innocence, *see* Ariz. R. Crim. P. 32.1(h), Cruz did not raise that claim below and we therefore do not address it. *See State v. Ramirez*, 126 Ariz. 464, 467-68, 616 P.2d 924, 927-28 (App. 1980) (appellate court will not consider on review claims not raised below); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”). For the same reason, we do not address Cruz’s claim that he pled guilty only “because [he] felt boxed in due to [his] plea being contingent with [his] fianc[ée]’s and mother-in-law’s plea[s].”

¶6 For the reasons stated, 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