

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

SEP -5 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0225-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
HIPOLITO CHAVEZ MORENO,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2010137764001DT

Honorable Paul J. McMurdie, Judge

PETITION FOR REVIEW DISMISSED

Hipolito Chavez Moreno

Douglas
In Propria Persona

ECKERSTROM, Judge.

¶1 Hipolito Moreno has filed a petition for review of the trial court's order refusing his request to file an amended petition for post-conviction relief. Because the order is not a final decision, we dismiss the petition.

¶2 Moreno pled guilty in 2010 to conspiracy to possess marijuana for sale and was sentenced to a twelve-year prison term. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but was "unable

to raise any viable issues under Rule 32,” Ariz. R. Crim. P. The court ordered that Moreno would have forty-five days to file a pro se petition for post-conviction relief. Approximately two months later, Moreno sent a letter to the court claiming that his sentence was disproportionate to those received by his codefendants, that his trial counsel did not adequately present as mitigation his reasons for being involved in the crime, and that his counsel had informed him he would receive, at most, a nine-year prison sentence. The state filed a response, and the court ordered Moreno to file a reply.

¶3 Moreno then filed a series of motions and extension requests, ultimately claiming that he had not intended his letter to serve as his petition for post-conviction relief and requesting permission to file an amended petition in compliance with Rule 32.5. The trial court determined that Moreno “can meet his goals by filing a reply to the state’s response,” denied his request to file an amended petition, and granted Moreno an additional extension of time to file a reply. Rather than file a reply, however, Moreno filed the petition for review now before us.

¶4 Moreno argues in his petition that the trial court erred in treating the letter he had filed as his petition for post-conviction relief because it did not comply with Rule 32.5, and he asks that we “order the superior court to allow [him] to file a[n] ‘amended’ petition for post-conviction relief.” He additionally claims—for the first time—that his appointed Rule 32 counsel had failed to send him “police reports, court documents,

transcripts, etc.,”¹ and he therefore was unable to determine what issues to raise in his pro se petition. He asks that we order his appointed counsel to send those materials.

¶5 Rule 32.9(c), however, permits a petitioner to seek review only “after the final decision of the trial court on the petition for post-conviction relief.” When Moreno filed his petition for review, the trial court had not finally determined the merits of the issues he had raised in his letter. Furthermore, Moreno never filed a reply, which the court had suggested would permit him to cure any deficiencies in the arguments he had raised. And Moreno never claimed below that his appointed Rule 32 counsel had failed to send him materials necessary to complete his petition. Because the issues about which Moreno complains are not properly before us, we dismiss the petition for review.

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

CONCURRING:

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

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

¹This claim appears at least partially inconsistent with a filing below in which he acknowledged his attorney had sent him various trial documents.