

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

OCT 31 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0246-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RONNIE GENE SARTIN JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR061619

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Ronnie G. Sartin Jr.

Buckeye
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Ronnie Sartin Jr. seeks review of the trial court's order summarily denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., asserting he is entitled, at the very least, to an evidentiary

hearing. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Sartin was convicted after a jury trial of first-degree murder.¹ The trial court sentenced him to a prison term of natural life. We affirmed his conviction and sentence on appeal and denied relief on his petition for review from the court's denial of his first petition for post-conviction relief. *State v. Sartin*, Nos. 2 CA-CR 2008-0025, 2 CA-CR 2008-0235-PR (consolidated) (memorandum decision filed Oct. 16, 2009). In 2011, attorney Stephanie Meade filed a second Rule 32 petition on Sartin's behalf, asserting, inter alia, claims of ineffective assistance of Brick Storts and co-counsel Ian Tomlinson, who had represented Sartin at trial, on appeal, and in his first post-conviction proceeding. Following an evidentiary hearing, the court denied relief, and we denied relief on Sartin's petition for review from that ruling. *State v. Sartin*, No. 2 CA-CR 2012-0077-PR (memorandum decision filed July 11, 2012).

¶3 Sartin then filed, in propria persona, his third post-conviction petition, asserting trial counsel had been ineffective by failing to (1) investigate cumulative post-traumatic stress disorder (PTSD) issues, (2) request a new psychological evaluation before his second trial, and (3) conduct plea negotiations adequately. He further asserted that appellate counsel was ineffective for failing to raise the PTSD issue on appeal and that Meade similarly was ineffective for failing to allege these claims of trial and appellate counsel's ineffectiveness in Sartin's second post-conviction proceeding. The trial court summarily denied his petition, and this petition for review followed.

¹After his first conviction for first-degree murder was set aside following post-conviction proceedings, Sartin again was convicted of the same offense following a second jury trial.

¶4 On review, Sartin argues the trial court erred in precluding his claims of ineffective assistance of trial and appellate counsel.² He further contends the court erred by finding Meade was not ineffective for failing to argue that trial and appellate counsel were ineffective for not raising the issues he now presents. In its ruling denying relief, the court first provided an accurate and complete summary of the procedural history of the case. It then correctly found Sartin precluded from raising claims of ineffective assistance of trial and appellate counsel. *See* Ariz. R. Crim. P. 32.2(a)(3) (“A defendant shall be precluded from relief under this rule based upon any ground . . . [t]hat has been waived at trial, on appeal, or in any previous collateral proceeding.”).

¶5 Generally, a defendant must raise claims of ineffective assistance of counsel, if at all, in his or her initial Rule 32 proceeding. *State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002) (“Our basic rule is that where ineffective assistance of counsel claims are raised, or could have been raised, in a [previous] Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.”) (emphasis omitted); *see also Swoopes*, 216 Ariz. 390, ¶ 23, 166 P.3d at 952 (same). Thus, because Sartin could have raised, and in fact did raise, claims of ineffective assistance of trial and appellate counsel in his second Rule 32 petition, the trial court correctly found those claims precluded.

²To the extent Sartin also asserts the trial court should have granted relief on his argument that the state improperly refused to extend a plea offer as a result of Sartin having contacted the media, we do not address this claim, which Sartin appears to have raised for the first time in his reply to the state’s response to the petition for post-conviction relief. Although the court ruled before having received Sartin’s reply, the court would not have abused its discretion by refusing to consider a claim raised for the first time in the reply in any event. *See State v. Lopez*, 223 Ariz. 238, ¶ 7, 221 P.3d 1052, 1054 (App. 2009) (rule that defendant waives claims raised for first time in reply brief applies to Rule 32 proceedings).

¶6 The trial court also found Sartin was “not precluded from raising ineffective assistance of counsel claims against previous Rule 32 counsel, Stephanie Meade, Esq., if her failure to raise the alleged ineffective assistance of counsel claims in the previous Rule 32 petition fell below an objective standard [of] reasonableness, and was prejudicial to the defendant.” However, this claim is not cognizable under Rule 32. “[T]he non-pleading defendant has ‘no constitutional right to counsel or effective assistance in post-conviction proceedings’; although the non-pleading defendant has the right to effective representation on appeal, he has no ‘valid, substantive claim under Rule 32’ for ‘ineffective assistance on a prior [post-conviction relief] petition.’” *Osterkamp v. Browning*, 226 Ariz. 485, ¶ 18, 250 P.3d 551, 556 (App. 2011), quoting *State v. Krum*, 183 Ariz. 288, 292 & n.5, 903 P.2d 596, 600 & n.5 (1995) (alteration in *Osterkamp*). See also *State v. Mata*, 185 Ariz. 319, 336-37, 916 P.2d 1035, 1052-53 (1996).³

¶7 In any event, although it was not required to do so, the trial court correctly addressed the merits of Sartin’s claims. In order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel’s performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). In a thorough, well-reasoned

³However, Sartin was not precluded from raising claims of ineffective assistance of trial and appellate counsel in his second Rule 32 petition because he could not have raised them in his first Rule 32 petition, in which he was represented by trial and appellate counsel. Counsel could not be expected to evaluate and assert his or her own ineffectiveness. *State v. Bennett*, 213 Ariz. 562, ¶ 14, 146 P.3d 63, 67 (2006) (where non-pleading defendant represented by same counsel on appeal and in Rule 32 proceeding, defendant did not waive and was not precluded from raising in successive proceeding claim of ineffective assistance of appellate counsel for failing to raise same in first post-conviction proceeding).

minute entry, the court identified Sartin's claims and resolved them correctly in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded the claims regarding Meade's ineffectiveness were not colorable. No purpose would be served by restating the court's ruling in its entirety. *See id.* Rather, we adopt the ruling.

¶8 Accordingly, we grant review but deny relief.

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

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Administrative Order No. 2012-101 filed December 12, 2012.