

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 11 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0255-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT GALVAN,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009134252001DT

Honorable James T. Blomo, Judge

REVIEW GRANTED; RELIEF DENIED

Robert Galvan

Kingman
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Robert Galvan 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). Galvan has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Galvan was convicted of possession of narcotic drugs for sale, possession of dangerous drugs for sale, and possession of drug paraphernalia. The trial court imposed enhanced, presumptive, concurrent prison terms, the longest of which was 15.75 years. Galvan’s convictions and sentences were affirmed on appeal. *State v. Galvan*, No. 1 CA-CR 10-0165 (memorandum decision filed Sept. 23, 2010). He initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and was “unable to raise any viable issues under Rule 32.” Galvan did not file a supplemental petition and the trial court dismissed the proceeding in July 2011.

¶3 In May 2012, Galvan initiated a second proceeding for post-conviction relief, arguing in his notice and petition that newly discovered evidence relating to the search of his home established that he had received ineffective assistance of trial counsel. The trial court dismissed Galvan’s notice, concluding that Galvan’s claim of ineffective assistance could not be raised in a successive proceeding.

¶4 On review, Galvan states that “the claim presented to the superior court for consideration” is not before us, “but rather the summary dismissal” of his successive notice.¹ To the extent we understand his argument, he contends the court erred in

¹Because Galvan specifically limits his argument on review and does not make any argument as to the propriety of the trial court’s conclusion that his claim is precluded, we

dismissing the notice before the state filed a response and thereby “relieved the state of the burden to assert a qualified affirmative defense.” In support of his argument, Galvan cites federal court decisions relating to habeas corpus proceedings.

¶5 Rule 32.2(b) provides that a court is to summarily dismiss a successive notice of post-conviction relief if it fails to set forth the “specific exception” to preclusion under which the claim is brought and to give “meritorious reasons . . . substantiating the claim and indicating why the claim was not [previously] stated.” In this case, Galvan vaguely stated in his notice that he had “only recently been appraised [sic] of the existence of material facts” related to the search of his home and that “counsel knew or reasonably should have known of the existence of said facts and counsel[’]s failure to properly investigate” constituted ineffective assistance. We cannot say the court abused its discretion in determining that this statement was insufficient to substantiate a non-precluded claim and did not provide “meritorious reasons” for Galvan’s failure to raise the claim in his previous Rule 32 proceeding. Nor has Galvan provided any argument to establish otherwise. *See* Ariz. R. Crim. P. 32.9(c)(1) (petitioner must set forth “[t]he reasons why the petition [for review] should be granted).

¶6 Moreover, this court has stated, “the trial court is not bound to grant [a defendant’s] motion just because the state failed to respond to it.” *State v. Cawley*, 133 Ariz. 27, 29, 648 P.2d 142, 144 (App. 1982). The federal cases Galvan cites involve the federal courts’ consideration of claims made in federal habeas corpus proceedings. *See*

do not address that issue. *See State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010).

Moormann v. Schriro, 426 F.3d 1044, 1053 (9th Cir. 2005); *Nevius v. Sumner*, 852 F.2d 463, 470 (9th Cir. 1988). They are inapposite here. Galvan’s claim that the court erred in ruling before the state filed a response therefore fails.

¶7 Although we grant the petition for review, 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