

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

PUBLIO HERNANDEZ GUZMAN,  
*Petitioner.*

No. 2 CA-CR 2013-0352-PR  
Filed November 15, 2013

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24*

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Petition for Review from the Superior Court in Maricopa County

No. CR2006011335001DT

The Honorable Roland J. Steinle, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Diane Meloche, Deputy County Attorney, Phoenix

*Counsel for Respondent*

Neal W. Bassett, Phoenix

*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Howard and Judge Miller concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Publio Guzman 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). Guzman has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Guzman was convicted of possession of marijuana for sale and possession of drug paraphernalia. The trial court imposed "super aggravated," concurrent prison sentences, the longer of which was 12.5 years. Guzman appealed his convictions and sentences, but the appeal was dismissed as untimely in April 2010. Guzman was allowed a delayed appeal, in which his convictions were affirmed and his sentence on the paraphernalia charge was reduced to a presumptive term of one year. *State v. Guzman*, No. 1 CA-CR 10-0263 (memorandum decision filed Feb. 24, 2011). Guzman also sought post-conviction relief, arguing trial counsel was ineffective, and the trial court denied relief in an order dated January 25, 2011.

¶3 Guzman filed a "second [R]ule 32 petition" in June 2011, arguing he was entitled to have "assurances" made to him by a commissioner during a settlement conference "enforced" and the trial court abused its discretion in imposing an aggravated sentence in contravention of those assurances. And he maintained appellate counsel was ineffective in failing to raise such claims. The trial court summarily denied relief.

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¶4 On review, Guzman concedes his argument that the trial court improperly imposed an aggravated sentence was without merit, but again maintains that “he was entitled to rely on the [settlement] commissioner’s assurance that his clean record would be a mitigating factor at sentencing” and that if the commissioner’s statement “was not accurate, [he] is entitled to have his conviction[s] vacated, and to have the prosecutor’s settlement conference plea offer re-opened.” Guzman claims that during a settlement conference on his case, the settlement commissioner indicated to him that his lack of a criminal record was a mitigating factor. The case did not settle and proceeded to trial, after which Guzman was convicted and sentenced as noted above.

¶5 Any claim that the settlement commissioner committed some sort of error is precluded by Guzman’s failure to raise it on appeal. See Ariz. R. Crim. P. 32.2(a)(3). And, although he asserts that appellate and first Rule 32 counsel<sup>1</sup> should have raised the claim and were ineffective in failing to do so, he has not developed any argument in support of that position. He cites no authority to support a claim that counsel should have raised this issue. Cf. *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument on appeal “constitutes waiver of that claim”). He provided no affidavits or other evidence to establish that failure to raise this issue constituted deficient performance. See Ariz. R. Crim. P. 32.5 (“Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it.”); *State v. Donald*, 198 Ariz. 406, ¶ 21, 10 P.3d 1193, 1201 (App. 2000) (to warrant evidentiary hearing, Rule 32 claim “must consist of more than conclusory assertions”). And he has not asserted or established that he was prejudiced by counsels’ failure to raise the issue. See *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (to establish claim of ineffective assistance of counsel, defendant must show counsel’s performance deficient under prevailing professional norms and prejudiced defense). Therefore, although we grant the petition for review, we deny relief.

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<sup>1</sup>As a non-pleading defendant, Guzman was not entitled to effective assistance of Rule 32 counsel. See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013).