

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSE LORETO MADUENO-ARCE,
Petitioner.

No. 2 CA-CR 2013-0391-PR
Filed December 23, 2013

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Maricopa County

No. CR2009130463001DT

The Honorable Pamela D. Svoboda, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Jose L. Madueno-Arce, Tucson
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Kelly and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 Petitioner Jose Madueno-Arce 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). Madueno-Arce has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Madueno-Arce was convicted of kidnapping. The trial court sentenced him to an enhanced, presumptive prison term of 10.5 years. Madueno-Arce sought and was denied post-conviction relief, and his petition for review of that decision was dismissed as untimely.

¶3 In June 2012, Madueno-Arce filed a "successive Rule 32 Petition," arguing that a search of his home had been illegal, that he had received ineffective assistance of counsel because trial counsel had not objected to the search and had "inadequate information about the prosecution's case at the plea offer stage," rendering his plea involuntary. In July 2012, he filed a notice of post-conviction relief, asserting newly discovered evidence that "probably would have changed the verdict or sentence." Specifically, he stated he had recently received his file from trial counsel and it contained "information that would have caused [him] to reject the plea offer and go to trial."

¶4 In a combined ruling, the trial court resolved both the June and July filings. It construed the June 2012 petition as Madueno-Arce's second proceeding, concluded the claims raised

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therein were precluded, and dismissed the petition. It treated the July 2012 notice as a notice initiating a third proceeding and dismissed it.

¶5 On review, Madueno-Arce raises additional claims of ineffective assistance of counsel, repeats his claim that counsel was ineffective in failing to object to the admission of evidence allegedly obtained in violation of his Fourth Amendment rights, asserts that counsel's having withheld his file kept him from filing "a timely petition," relies on *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000), in support of an argument he was deprived of information needed to make a voluntary and intelligent decision about his plea offer, and the trial court abused its discretion in dismissing his petition and notice.

¶6 We do not address those issues Madueno-Arce raises for the first time on review. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). And, we cannot otherwise say the trial court abused its discretion in denying Madueno-Arce's second petition for post-conviction relief or in dismissing the notice in his third proceeding.

¶7 The court clearly identified the claims Madueno-Arce had raised and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. See *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[']s rehashing the trial court's correct ruling in a written decision"). Madueno-Arce has not established that the evidence he claims to have discovered in his file constituted newly discovered evidence within the meaning of Rule 32.1(e). See *State v. Saenz*, 197 Ariz. 487, ¶ 13, 4 P.3d 1030, 1033 (App. 2000) ("Evidence is not newly discovered unless it was unknown to the trial court, the defendant, or counsel at the time of trial and neither the defendant nor counsel could have known about its existence by the exercise of due diligence."); cf. *State v. Dogan*, 150 Ariz. 595, 600, 724 P.2d 1264, 1269 (App. 1986) (fact defendant was only person wearing identified item of clothing in photographic lineup not newly discovered, but "merely a fact that was not argued . . . by . . . trial counsel"). Nor did

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Madueno-Arce's third notice comply with the requirements of Rule 32.2(b).

¶8 Therefore, although we grant the petition for review, relief is denied.