

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JAIME ANTONIO TORRES,  
*Petitioner.*

No. 2 CA-CR 2014-0356-PR  
Filed January 14, 2014

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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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Pima County

No. CR20084880

The Honorable James E. Marner, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

West, Elsberry, Longenbaugh & Zickerman, P.L.L.C., Tucson  
By Anne Elsberry  
*Counsel for Petitioner*

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MEMORANDUM DECISION

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

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VÁSQUEZ, Judge:

¶1 Petitioner Jaime Torres seeks review of the trial court’s summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. For the following reasons, we grant review but deny relief.

¶2 After a jury trial, Torres was convicted of conspiracy to commit possession of marijuana for sale, possession of marijuana for sale, and possession of drug paraphernalia. The trial court sentenced him to enhanced, presumptive, concurrent sentences totaling 9.25 years. This court affirmed his convictions and sentences on appeal. *State v. Torres*, No. 2 CA-CR 2010-0283 (memorandum decision filed Oct. 12, 2011).

¶3 Torres then filed a petition for post-conviction relief asserting ineffective assistance of trial counsel. The trial court concluded Torres had failed to state a colorable claim and dismissed his petition. *See* Ariz. R. Crim. P. 32.6(c) (court “shall . . . dismiss[]” Rule 32 petition upon finding no “material issue of fact or law which would entitle the defendant to relief” and that “no purpose would be served by any further proceedings”). In its ruling, the court noted Torres had developed arguments to support only two of his assertions of error by trial counsel. And, although the court stated Torres had identified the legal basis for “what qualifies as a reasonable investigation,” it found his argument was limited to a “conclusory statement” that counsel had “failed to thoroughly[sic] investigate this case.” The court therefore concluded Torres had “provide[d] no factual allegation that, if found to be true, could provide a basis for an ineffective assistance of counsel claim.” The court rejected Torres’s final claim—that his trial counsel had been

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ineffective in failing to challenge his arrest after a traffic stop—finding evidence presented at trial and a pretrial hearing “would easily support a determination that probable cause existed for the roadside arrest” and, therefore, “not challenging the traffic stop on grounds of reasonable suspicion is not a reflection of incompetence” but “reflects a competent attorney directing his time and resources toward reasonable avenues of possible success.”

¶4 The court acknowledged Torres’s untimely filing of an affidavit from an experienced criminal attorney, who averred his review of certain case documents and communications with Rule 32 counsel had “le[d him] to the conclusion” that Torres’s trial attorney had rendered ineffective assistance “in certain respects.” But the court found the affidavit of little probative value, noting the affiant had “candidly acknowledged” he had not had “the opportunity to review a critical source of information—namely the trial file” of Torres’s trial attorney—and that “the contents of this file could alter his opinions.”

¶5 On review, Torres argues the trial court abused its discretion in failing to afford him an evidentiary hearing, but he does not address any of the court’s specific findings. Instead, he relies only on the conclusory assertion that his claims were colorable, stating he had “raised the appropriate issues regarding ineffective assistance of counsel and provided the Court with an affidavit of a former prosecutor regarding the standard of care due” and, “[a]dditionally, . . . [had] argued presumed prejudice.” But Torres does not relate the contents of the affidavit he submitted or its alleged relevance to claims he raised below, and he advances no basis to suggest the court abused its discretion in finding it was not “sufficiently persuasive to support a colorable claim.”<sup>1</sup> See *State v.*

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<sup>1</sup>Torres’s unexplained reliance on the affidavit is particularly inappropriate here, where the record on review includes only an incomplete and unsigned version. It is a petitioner’s responsibility to ensure the record on review includes material necessary for consideration of his claims, and this court will presume “missing material supports the action of the trial court.” *State v. Wilson*, 179 Ariz. 17, 19 n.1, 875 P.2d 1322, 1324 n.1 (App. 1993).

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*Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of post-conviction relief reviewed for abuse of discretion).

¶6 In sum, Torres fails to provide any meaningful argument, based in fact or law, relevant to our consideration on review. See Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain “reasons why the petition should be granted” and either “specific references to the record” or supporting appendix); see also *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002); cf. *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on appeal). Accordingly, although we grant review, we deny relief.