

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

FRANKIE LEE RODRIGUEZ,
Petitioner.

No. 2 CA-CR 2015-0102-PR
Filed June 26, 2015

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Pima County

No. CR20003991001

The Honorable Casey F. McGinley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Office of Thomas Jacobs, Tucson

By Thomas Jacobs

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.

VÁSQUEZ, Judge:

¶1 Frankie Rodriguez seeks review of the trial court’s summary dismissal of his untimely, successive petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but we deny relief.

¶2 After a 2002 jury trial, Rodriguez was convicted of two counts of first-degree murder, two counts of kidnaping, two counts of armed robbery, two counts of theft of a means of transportation, and one count each of theft by control, second-degree burglary, and theft by control and/or controlling stolen property. The trial court sentenced him to multiple prison terms, including two consecutive, natural-life sentences. We affirmed his convictions and sentences on appeal. *State v. Rodriguez*, No. 2 CA-CR 2003-0179 (memorandum decision filed Mar. 31, 2005). Rodriguez then initiated a Rule 32 proceeding in which he alleged multiple claims of ineffective assistance of trial and appellate counsel. The trial court denied relief, as did this court after review, *State v. Rodriguez*, No. 2 CA-CR 2011-0290-PR (memorandum decision filed Dec. 28, 2011), and our supreme court denied review of that ruling.

¶3 In this second, untimely Rule 32 proceeding, Rodriguez asserted the trial court “clearly erred” in denying claims of ineffective assistance of trial counsel he raised in his first Rule 32 petition, and he argued his first Rule 32 counsel performed deficiently in addressing these alleged errors in the petition for review filed in that proceeding. He also asserted the Arizona Department of Corrections had “erroneously” withdrawn funds from his prison account to pay his restitution obligation, and he sought relief from that practice.

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¶4 The trial court dismissed the petition, concluding Rodriguez had failed to state a colorable claim for relief available under Rule 32. This petition for review followed.

¶5 We review a summary denial of post-conviction relief for an abuse of discretion, *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006), and we find none here. The trial court clearly identified Rodriguez's claims and resolved them correctly based on a thorough, well-reasoned analysis.¹ We need not repeat that analysis here; instead, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 Accordingly, we grant review, but we deny relief.

¹The trial court correctly ruled that Arizona law does not recognize a non-pleading defendant's post-conviction claim of ineffective assistance of Rule 32 counsel. *See State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013). To the extent Rodriguez intended to collaterally attack the final resolution of his previous Rule 32 proceeding, any such claim is clearly precluded. *See* Ariz. R. Crim. P. 32.2(a)(2); *see also supra* ¶ 2.