

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

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

FRANK SILVA ROQUE,  
*Petitioner.*

No. 2 CA-CR 2015-0108-PR  
Filed April 21, 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NOT FOR PUBLICATION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 Maricopa County

No. CR2001095385

The Honorable Mark F. Aceto, Judge

**REVIEW GRANTED; RELIEF DENIED**

---

Frank S. Roque, Buckeye  
*In Propria Persona*

STATE v. ROQUE  
Decision of the Court

---

MEMORANDUM DECISION

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

---

H O W A R D, Judge:

¶1 Petitioner Frank Roque seeks review of the trial court’s order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We generally review the denial of post-conviction relief for an abuse of discretion. *See State v. Harden*, 228 Ariz. 131, ¶ 3, 263 P.3d 680, 681 (App. 2011). Roque has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Roque was convicted of first-degree murder, attempted first-degree murder, reckless endangerment, and three counts of drive-by shooting. He initially was sentenced to death for the murder conviction, but our supreme court reduced that sentence to natural life imprisonment and affirmed Roque’s convictions and remaining sentences. *State v. Roque*, 213 Ariz. 193, ¶ 171, 141 P.3d 368, 406 (2006). Roque has since sought and been denied post-conviction relief numerous times.

¶3 In September 2013, Roque filed another notice of post-conviction relief, in which he asserted that newly discovered material facts exist that would have changed the verdicts. He stated, “This claim was raised in a timely Rule 32 petition filed in 2006” but then claimed that upon later obtaining a transcript of the trial he had “discovered new facts to support winning the claim [that] a ‘Brady violation’ occurred by the state withholding material facts” relating to “a ‘forensic blood alcohol determination.’” The trial court dismissed the notice.

¶4 On review, Roque argues that the state withheld evidence relating to his intoxication at the time of the crimes until trial and that this alleged violation of the rule set forth in *Brady v.*

STATE v. ROQUE  
Decision of the Court

*Maryland*, 373 U.S. 83 (1963), entitles him to relief. But as Roque states, and as the trial court pointed out, the evidence was presented at trial. We agree with the court that Roque's claim of newly discovered evidence is therefore without merit. See Ariz. R. Crim. P. 32.1(e) (claim of newly discovered evidence requires facts be "discovered after the trial" and showing of "due diligence in securing" facts). And, given that the evidence purportedly withheld by the state was presented at trial, a *Brady* claim could have been made at trial or on appeal. Thus, any such claim is precluded and barred in this untimely, successive proceeding. See Ariz. R. Crim. P. 32.2(a)(3), 32.4(a).

¶5 Therefore, although we grant the petition for review, we deny relief.