

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RENE ANTHONY CASTILLO,
Petitioner.

No. 2 CA-CR 2015-0118-PR
Filed June 9, 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NOT FOR PUBLICATION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. CR20094341001

The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Rene Anthony Castillo, San Luis
In Propria Persona

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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 Petitioner Rene Castillo 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). Castillo has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Castillo was convicted of two counts of attempted armed robbery, one count of armed robbery, and three counts of aggravated assault with a dangerous weapon. The trial court sentenced him to concurrent and consecutive terms totaling eighteen years’ imprisonment. The convictions and sentences were affirmed on appeal. *State v. Castillo*, No. 2 CA-CR 2011-0043 (memorandum decision filed Nov. 30, 2011).

¶3 Castillo initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and determined “no legal issues of merit exist[ed].” The trial court allowed Castillo time to file a pro se supplemental petition, but when he failed to do so, the court dismissed the proceeding in March 2013.

¶4 Castillo filed another notice of post-conviction relief in May 2014. In his petition he argued he had received ineffective assistance of counsel, the court had erred in refusing to admit evidence about Castillo’s mental health from his wife, he was “convicted without the benefit of accurate and empir[ical] forensic evidence,” and his consecutive sentences were illegal. In his reply to

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the state's response, Castillo also argued our decision on appeal was "in violation of" his due process rights and claimed counsel in his first Rule 32 proceeding was ineffective. The trial court summarily denied relief. The court likewise denied Castillo's subsequent motion for rehearing.

¶5 On review, Castillo maintains he received ineffective assistance of trial and appellate counsel. And he points to an issue "presented to but not decided by the [trial] court," specifically a claim of ineffective assistance of his first Rule 32 counsel. He also makes various claims relating to problems in his Rule 32 proceedings due to his "unsound mind." And he contends the trial court erred in summarily denying his petition.

¶6 We disagree. Although the trial court addressed some of Castillo's claims on the merits, his claims are precluded—each claim either was or could have been raised on appeal or in his first Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). Furthermore, the court was not required to address Castillo's claim of ineffective assistance of counsel in his first Rule 32 proceeding as it was raised for the first time in his reply to the state's response. *Cf. State v. Lopez*, 223 Ariz. 238, ¶ 7, 221 P.3d 1052, 1054 (App. 2009) (trial court need not consider claims of ineffective assistance of counsel first raised in petitioner's reply). And in any event, as a non-pleading defendant, Castillo was not entitled to the effective assistance of Rule 32 counsel; non-pleading defendants "have no constitutional right to counsel in post-conviction proceedings." *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013).

¶7 Therefore we grant the petition for review, but deny relief.