

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

REYNALDO WILLIAM VIDAL,
Petitioner.

No. 2 CA-CR 2015-0183-PR
Filed September 3, 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NOT FOR PUBLICATION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. CR20103106001

The Honorable Scott Rash, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Reynaldo W. Vidal, Tucson
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Miller and Judge Howard concurred.

ESPINOSA, Judge:

¶1 Petitioner Reynaldo Vidal 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). Vidal has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Vidal was convicted of multiple counts of theft by control and trafficking in stolen property. The trial court imposed concurrent terms of imprisonment on six of the convictions, the longest of which were five-year terms for trafficking. It then suspended the imposition of sentence on one count of theft and one count of trafficking and placed Vidal on probation for three years and seven years respectively. The probation terms were concurrent to one another, but the court ordered that they be completed consecutive to the prison terms. This court affirmed Vidal's convictions and sentences on appeal. *State v. Vidal*, No. 2 CA-CR 2013-0453 (memorandum decision filed Sept. 8, 2014).

¶3 Vidal initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and "could not find any legitimate basis for relief under Rule 32." In a supplemental, pro se petition, however, Vidal argued the trial court had erred "when it sentenced the defendant to both prison and probation within the same CR case number," in ordering a probation term at all, and in designating a prior conviction as a felony instead of a misdemeanor. He also argued trial counsel had

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been ineffective in failing to object to these alleged errors. The trial court summarily denied relief.

¶4 On review, Vidal again argues the trial court could not sentence him both to prison and probation “in the same CR number” and that he was not eligible for probation. These claims, as the trial court correctly concluded, are precluded because Vidal did not raise them on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3). Vidal does not mention his claim relating to the designation of his prior offense, however, and we therefore do not address it. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “the reasons why the petition should be granted” and “specific references to the record”); *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review).

¶5 Likewise, Vidal does not expressly argue on review that he received ineffective assistance of trial counsel, and he has therefore abandoned the claim. *See* Ariz. R. Crim. P. 32.9(c)(1); *Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d at 1048 n.4. Even if not waived, however, we would reject the claim. “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). Nothing in Vidal’s petition for post-conviction relief suggested that counsel’s performance in allowing Vidal to receive a term of probation instead of prison was deficient or that Vidal was prejudiced by counsel’s actions.

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