

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RAUL RENE MARTINEZ,
Petitioner.

No. 2 CA-CR 2015-0238-PR
Filed September 18, 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NOT FOR PUBLICATION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. CR20113408002
The Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Raul Rene Martinez, San Luis
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Kelly¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Raul Martinez seeks review of the trial court's order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Martinez has not met his burden of demonstrating such abuse here.

¶2 Martinez pled guilty to second-degree murder and was sentenced to a sixteen-year prison term. During the plea colloquy, Martinez admitted participating in kidnapping the victim, who was later killed by one of Martinez's codefendants. The grand jury transcript, which the trial court incorporated as part of the factual basis for the plea, includes evidence that Martinez participated in beating the victim, that at least one nine-millimeter shell casing was found with the victim, and that Martinez had been in possession of a blood-spattered, nine-millimeter handgun immediately before his arrest. Martinez filed a notice of appeal. Apparently treating that notice as a notice of post-conviction relief, the court appointed counsel for Martinez. Appointed counsel filed a notice stating he had reviewed the record but found no claims to raise in post-conviction proceedings.

¶3 Martinez then filed a pro se petition, arguing that his trial counsel had "threatened and coerced" him into entering a plea despite being aware of his innocence and that he was actually innocent because the factual basis for his plea was "'false,'"

¹The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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maintaining he was “‘guilty of mere presence’ only.” The trial court summarily denied relief, and this petition for review followed.

¶4 On review, Martinez essentially repeats his claims that counsel coerced him into pleading guilty and that he is actually innocent. We have reviewed the record and the trial court’s ruling and are satisfied it correctly rejected Martinez’s claim of ineffective assistance of counsel; we therefore adopt that ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶5 To prevail on a claim of actual innocence, Martinez was required to “demonstrate[] by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found [him] guilty of the underlying offense beyond a reasonable doubt.” Ariz. R. Crim. P. 32.1(h). But Martinez has done nothing more than attempt to contradict his admissions at the change of plea. This is insufficient to establish a colorable claim that no reasonable jury could have found him guilty – Martinez must do more than contradict what the record plainly shows. *See State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998) (defendant’s claim he was unaware sentence “must be served without possibility of early release” not colorable when “directly contradicted by the record”).

¶6 We grant review but deny relief.