

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RUDY MONTANO,
Petitioner.

No. 2 CA-CR 2016-0203-PR
Filed July 20, 2016

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NOT FOR PUBLICATION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. CR2011005994001DT
The Honorable Roger E. Brodman, Judge

REVIEW DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Lisa Marie Martin, Deputy County Attorney, Phoenix
Counsel for Respondent

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Rudy Montano, Buckeye
In Propria Persona

MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 Rudy Montano petitions this court for review of the trial court's order summarily denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We deny review.

¶2 After a jury trial, Montano was convicted of aggravated assault, disorderly conduct, and obstructing criminal investigations or prosecutions.¹ He was sentenced to concurrent and consecutive prison terms totaling fourteen years. We affirmed his convictions and sentences on appeal. *State v. Montano*, No. 1 CA-CR 11-0800, ¶ 7 (Ariz. App. February 19, 2013) (mem. decision).

¶3 Montano then sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claims to raise in post-conviction proceedings. The trial court granted Montano leave to file a pro se petition. Montano filed several documents, which the court struck for noncompliance with Rule 32.5.

¶4 Montano filed another notice of post-conviction relief, in which he indicated that he was raising claims of ineffective assistance of counsel, that there were newly discovered material facts relevant to his convictions or sentences, and that he is actually innocent. He also asserted his sentence was "excessive since charges

¹He additionally pled guilty to one count of threatening and intimidating.

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all occurred at one time and sentences were r[un] consecutively,” insufficient evidence supported some or all of his convictions, and arresting officers were not “present to be cross examined” due to issues with victim and witness interviews.

¶5 The trial court construed the notice as Montano’s petition for post-conviction relief and ordered the state to respond. Following that response, Montano filed a reply in which he asserted his innocence and claimed his conduct was justified. The court summarily denied relief, and this petition for review followed.

¶6 Montano’s petition for review contains no meaningful description of the issues decided by the trial court or of the facts material to the consideration of those issues, and he does not explain how the court abused its discretion in rejecting his claims, as required by Rule 32.9(c)(1). To the extent he seeks to incorporate by reference his various trial-court filings, that procedure is not permitted by our rules. *See* Ariz. R. Crim. P. 32.5, 32.9(c); *State v. Bortz*, 169 Ariz. 575, 578, 821 P.2d 236, 239 (App. 1991). Montano’s failure to comply with Rule 32.9 justifies our summary refusal to grant review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain “reasons why the petition should be granted” and either appendix or “specific references to the record”), (f) (appellate review under Rule 32.9 discretionary); *see also State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶7 We deny review.