

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

AMOS BEVERETT,  
*Petitioner.*

No. 2 CA-CR 2016-0360-PR  
Filed January 10, 2017

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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NOT FOR PUBLICATION  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.*

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Petition for Review from the Superior Court in Pima County  
No. CR20091782001  
The Honorable Danelle B. Liwski, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Amos Beverett, San Luis  
*In Propria Persona*

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MEMORANDUM DECISION

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

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M I L L E R, Judge:

¶1 Petitioner Amos Beverett was convicted of three counts of sale and/or transfer of a narcotic drug and sentenced to concurrent, presumptive 15.75-year prison terms. *State v. Beverett*, No. 2 CA-CR 2010-0397, ¶ 1 (Ariz. App. Dec. 14, 2011) (mem. decision). This court affirmed his convictions and sentences on appeal. *Id.* ¶ 17. In two previous petitions for review to this court, we denied relief after the trial court denied Beverett relief in post-conviction proceedings. *State v. Beverett*, No. 2 CA-CR 2013-0245-PR, ¶ 6 (Ariz. App. Oct. 22, 2013) (mem. decision); *State v. Beverett*, No. 2 CA-CR 2012-0419-PR, ¶ 5 (Ariz. App. Feb. 21, 2013) (mem. decision). In this petition for review, Beverett contends the court erred by summarily dismissing his most recent notice of post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., in which he stated he wished to raise claims of ineffective assistance of trial counsel, prosecutorial misconduct and newly discovered evidence.

¶2 “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). Beverett filed a notice of post-conviction relief in September 2016 and on the same day he filed what he called a Notice of Post-Conviction Relief but appears to be and was regarded by the trial court as a petition for post-conviction relief. Indeed, Beverett referred to it as a petition. As the trial court correctly stated, the claims of ineffective assistance of trial counsel and prosecutorial misconduct that Beverett stated in the notice that he intended to raise are subject to summary dismissal because such claims may not be raised in an untimely or successive proceeding. *See* Ariz. R. Crim. P. 32.2(a), (b); 32.4(a).

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¶3 A claim of newly discovered evidence under Rule 32.1(e) may be raised in an untimely or successive proceeding. *See* Ariz. R. Crim. P. 32.2(b), 32.4(a). Although Beverett marked the form notice to indicate he intended to raise such a claim, the trial court concluded Beverett had failed to raise a colorable claim for relief, rejecting the claim summarily. Beverett has not sustained his burden of establishing the trial court abused its discretion. First, he did not establish meritorious reasons for not raising the claim in previous post-conviction proceedings. *See* Ariz. R. Crim. P. 32.2(b) (when non-precluded claim is raised in successive or untimely post-conviction relief proceeding, “the notice of post-conviction relief must set forth the substance of the specific exception [to preclusion] and the reasons for not raising the claim in the previous petition or in a timely manner” and notice subject to summary dismissal if “specific exception and meritorious reasons do not appear substantiating the claim and indicating why the claim was not stated in the previous petition or in a timely manner”).

¶4 Second, in his petition for review Beverett contends he is entitled to an evidentiary hearing on his claim, although it is not clear whether he is referring to his claim of manifest injustice based on prosecutorial misconduct or a claim of newly discovered evidence. In either case, he has not persuaded this court that the trial court erred in finding he did not raise a colorable claim for relief that would have entitled him to an evidentiary hearing. *See State v. D’Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). The “relevant inquiry” for determining if a defendant raised a colorable claim “is whether he has alleged facts which, if true, would *probably* have changed the verdict or sentence.” *State v. Kolmann*, 239 Ariz. 157, ¶ 8, 367 P.3d 61, 64 (2016), quoting *State v. Amaral*, 239 Ariz. 217, ¶ 11, 368 P.3d 925, 928 (2016). Beverett did not sustain that burden.

¶5 Because Beverett has not established the trial court abused its discretion, we have no basis for disturbing the court’s ruling. We therefore grant the petition for review but deny relief.