

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSHUA EDWARD SYMONETTE,
Petitioner.

No. 2 CA-CR 2017-0013-PR
Filed April 13, 2017

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NOT FOR PUBLICATION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. CR20131066001
The Honorable Richard D. Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Joshua Edward Symonette, Winslow
In Propria Persona

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MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 Petitioner Joshua Symonette 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 that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Following a jury trial, Symonette was convicted of possession of a deadly weapon by a prohibited possessor.¹ The trial court sentenced him to eight years’ imprisonment. On appeal, we affirmed Symonette’s conviction but vacated his sentence and remanded for resentencing. *State v. Symonette*, No. 2 CA-CR 2014-0111 (Ariz. App. July 31, 2015) (mem. decision). On remand, the court again imposed an eight-year prison term.

¶3 Symonette sought post-conviction relief, asking that he be resentenced to a six-year prison term because the sentence imposed “seems unfair” based on trial errors “that were not sufficient for reversal, but which deserve mercy under due process principles and Arizona statutes.” He maintained that, due to his self-representation at trial, he was prejudiced by the unexpected admission of a jail visitation video in which he admitted to having possessed a gun, and asserted he would have accepted the state’s plea offer if he had known the recorded statement would be used against

¹The trial court permitted Symonette to proceed pro se at trial, with the assistance of appointed advisory counsel.

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him.² The trial court summarily denied relief, and this petition for review followed.

¶4 In its ruling denying Symonette's petition below, the trial court summarized his claims as follows: "He now seeks a reduction of his sentence to six years, claiming his sentence is unfair due to his self-representation at trial, ignorance of the law, the unexpected admission of the videotape, and a previous favorable plea offer which he rejected." The court then noted that before imposing sentence, it had been "mindful of" and had taken into account all of the grounds Symonette had relied upon in his petition, as well as "the prosecutor's statement that the six year term may be appropriate." The court also stated that Symonette's extensive criminal history "was assuredly an important factor" at sentencing.

¶5 On review, Symonette contends the trial court abused its discretion by denying his Rule 32 petition, generally arguing his due process rights were denied by the admission of the jail video recording and he would have accepted the state's plea offer if he had known the recording would be admitted. He asserts his petition should be granted "based on the facts and all that took place or in [the] alternative," he asks that we order the state to "reoffer the first plea." By directing us to his petition for post-conviction relief as the basis for his "colorable claim," Symonette is essentially reasserting the same arguments he raised below, rather than establishing how the court erred by denying his claims. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall contain "reasons why the petition should be granted"). Moreover, Symonette has not provided support for his claim that his due process rights were violated by the admission of the video recording or concomitantly, that the court erred by refusing to reduce his sentence. Accordingly, Symonette has not established the court abused its discretion in summarily rejecting his claims. *See* Ariz. R. Crim. P. 32.6(c) (trial court must summarily dismiss claims

²On appeal, we rejected Symonette's challenge to the admission of the video-recorded statement. *Symonette*, No. 2 CA-CR 2014-0111, ¶¶ 12-17.

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presenting no “material issue of fact or law which would entitle the defendant to relief”).

¶6 Therefore, we grant review but deny relief.