

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MARTIN AVILA,
Petitioner.

No. 2 CA-CR 2017-0073-PR
Filed March 28, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2013430072005DT
The Honorable Sherry K. Stephens, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By E. Catherine Leisch, Deputy County Attorney, Phoenix
Counsel for Respondent

Martin Avila, Florence
In Propria Persona

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MEMORANDUM DECISION

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

VÁSQUEZ, Judge:

¶1 Martin Avila seeks review of the trial court’s ruling 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 clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Avila has not met his burden of demonstrating such abuse here.

¶2 In 2014, Avila pled guilty to charges of armed robbery and kidnapping. The trial court sentenced him to concurrent, 12.5-year prison terms for each offense. Avila sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but had found no “claims for relief to raise in post-conviction proceedings.”

¶3 Avila then filed a pro se petition, asserting his Fifth Amendment right against self-incrimination had been violated when a police officer “compelled a confession” by interviewing him at a hospital while he was under the influence of pain medication due to a gunshot wound to his leg. He additionally claimed that, contrary to a police report, he “did not shoot himself by accident” but instead had been shot by an accomplice. The trial court summarily denied relief, noting Avila had waived his Fifth Amendment claim by pleading guilty and had not “state[d] a legal basis for his claim” that he had been shot by an accomplice. This petition for review followed.

¶4 On review, Avila reasserts the claims raised below. We agree with the trial court that, by pleading guilty, Avila has waived all non-jurisdictional defects unrelated to the validity of his plea and, thus, has waived his claim that his privilege against self-incrimination

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was violated.¹ See *State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 708-09 (App. 2008); *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Avila additionally asserts for the first time in his petition for review that he “would not have pled guilty” had he “known of his 5th Amendment rights.” Even assuming, without deciding, that such a claim is not waived by his guilty plea, we do not address arguments made for the first time on review. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review).

¶5 And, as the trial court pointed out, even if Avila is correct that he was shot by an accomplice, he has not identified why that would entitle him to relief under Rule 32. Thus, he has waived this claim, and we do not address it further. See *State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013).

¶6 We grant review but deny relief.

¹Avila also contends he was not under arrest while at the hospital, apparently in response to the state’s characterization of his claim below as a claim that his rights were “violated by police when they questioned him after the arrest.” He has not explained how this issue is relevant to his claim, and, accordingly, we do not address it. See *State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).