

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ANTHONY J. HERNANDEZ,  
*Petitioner.*

No. 2 CA-CR 2017-0151-PR  
Filed June 13, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2011154410001DT  
The Honorable Cynthia Bailey, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Gerald R. Grant, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

Anthony Hernandez, San Luis  
*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Howard<sup>1</sup> concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Anthony Hernandez seeks review of the trial court’s ruling denying his petition for post-conviction relief filed pursuant to Rule 32.1, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Hernandez has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Hernandez was convicted of three counts of trafficking in stolen property. The trial court sentenced him to concurrent, 11.25-year prison terms for each offense. This court affirmed his convictions and sentences on appeal. *State v. Hernandez*, No. 1 CA-CR 13-0022 (Ariz. App. Nov. 26, 2013) (mem. decision).

¶3 Hernandez sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no “tenable issue” to raise in a Rule 32 proceeding. Hernandez then filed a pro se petition arguing that his trial and appellate counsel had been ineffective for failing to raise various purported defects in the state’s case. The alleged issues Hernandez identified included that a prosecution witness had recanted his earlier testimony that a global positioning system had been attached to the stolen goods and that the state had not presented the allegedly stolen property to the jury, adequately linked him to that property with fingerprint evidence, or preserved videotape evidence. The trial court summarily denied relief, and this petition for review followed.

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<sup>1</sup>The Hon. Joseph W. Howard, 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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¶4 On review, Hernandez repeats many of the assertions he made below and contends he has presented a colorable claim of ineffective assistance of trial counsel and the trial court therefore erred in summarily rejecting his petition. A defendant is entitled to a hearing only if he presents a colorable claim for relief, that is, “he has alleged facts which, if true, would *probably* have changed the verdict or sentence.” *State v. Amaral*, 239 Ariz. 217, ¶¶ 10-11, 368 P.3d 925, 927-28 (2016). “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *accord State v. Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d 61, 64 (2016); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¶5 Hernandez provides no citation to the record or relevant authority in support of his claim of ineffective assistance. And his arguments in his petition for review, like in his petition below, appear to be little more than a restatement of the arguments this court rejected on appeal – that the state relied on perjured testimony and presented insufficient evidence to sustain his convictions. Notably, Hernandez does not identify any evidence supporting his claim that a state’s witness recanted his testimony or any evidence or authority suggesting that counsel fell below prevailing professional norms. Nor does he establish that the result of his trial would have been different had counsel raised the arguments Hernandez identifies. Thus, he has waived his ineffective-assistance claim on review, and we do not address it further. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain “reasons why the petition should be granted” and “specific references to the record”); *State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).

¶6 We grant review but deny relief.