

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RANDY ALAN ZIMMER,  
*Petitioner.*

No. 2 CA-CR 2017-0156-PR  
Filed October 2, 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NOT FOR PUBLICATION  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 Gila County  
Nos. S0400CR201100522, S0400CR201200306 (Consolidated)  
The Honorable Timothy M. Wright, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Bradley D. Beauchamp, Gila County Attorney  
By June Ava Florescue, Deputy County Attorney, Globe  
*Counsel for Respondent*

Randy Alan Zimmer, San Luis  
*In Propria Persona*

STATE v. ZIMMER  
Decision of the Court

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**MEMORANDUM DECISION**

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

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S T A R I N G, Presiding Judge:

¶1 Randy Zimmer seeks 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 will not disturb the court's order unless the court clearly abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Zimmer has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Zimmer was convicted of five counts of aggravated assault and sentenced to concurrent prison terms, the longest of which is ten years. We affirmed his convictions and sentences on appeal. *State v. Zimmer*, Nos. 2 CA-CR 2013-0124, 2 CA-CR 2013-0125 (Ariz. App. Nov. 5, 2013) (consol. mem. decision). Zimmer sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise pursuant to Rule 32.

¶3 Although the trial court granted Zimmer leave to file a pro se petition, he did not do so; he instead filed a new notice of post-conviction relief, in which he stated counsel had failed to give him adequate information about a plea offer from the state. Noting no pro se petition had been filed, the court dismissed Zimmer's previous Rule 32 proceeding and reappointed counsel to represent him in the new proceeding. Counsel again filed a notice stating she had reviewed the record but found no claims to raise.

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<sup>1</sup>The Hon. Virginia C. Kelly, 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.

STATE v. ZIMMER  
Decision of the Court

¶4 Zimmer filed a pro se petition asserting: (1) the playing of a recorded 9-1-1 call at trial “violat[ed] the rules of evidence”; (2) his trial counsel was ineffective for failing to properly advise him regarding plea offers, call witnesses at trial, and object to alleged juror misconduct; (3) there had been juror misconduct; and (4) the court erred by failing to provide corrected jury instructions and adequately enforce its own ruling prohibiting discussion of an order of protection. The trial court summarily dismissed the petition, concluding the bulk of Zimmer’s claims were precluded because they could have been raised on direct appeal, and that his claims of ineffective assistance “do not present a material issue of fact or law.” The court denied Zimmer’s motion for rehearing, and this petition for review followed.

¶5 On review, Zimmer asserts: (1) the trial court could not “simply dismiss” his claims as raisable on appeal because “assigned appellate counsel refused to present [them], stating they were better presented in Rule 32 proceedings”; (2) he was entitled to an evidentiary hearing due to his “presentation of demonstrable evidence of judicial corruption and fraud”; and (3) the state committed misconduct during trial and during his Rule 32 proceeding. Zimmer did not clearly raise these arguments in his petition below, and we therefore need not address them on review. *See* Ariz. R. Crim. P. 32.9(c); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). And, in any event, even had these claims been properly raised in the trial court, they are precluded because Zimmer did not raise them in his first Rule 32 proceeding and he has not identified any applicable exception to preclusion. *See* Ariz. R. Crim. P. 32.1(d)-(h), 32.2(a)(3), (b).

¶6 We grant review but deny relief.