

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LAMONT ANTHONY THOMPSON,
Petitioner.

No. 2 CA-CR 2017-0167-PR
Filed June 29, 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NOT FOR PUBLICATION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 Yuma County
No. S1400CR200700408
The Honorable Lisa W. Bleich, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Robert E. Prather, Deputy County Attorney, Phoenix
Counsel for Respondent

Mary Elizabeth Perez, San Diego
Counsel for Petitioner

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Howard¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Lamont Thompson 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 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). Thompson has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Thompson was convicted of armed robbery, aggravated assault, and first-degree burglary. The trial court imposed enhanced, aggravated, concurrent prison sentences, the longest of which was twenty-two years. The convictions and sentences were affirmed on appeal. *State v. Thompson*, No. 1 CA-CR 11-0511, ¶ 1 (Ariz. App. Sept. 18, 2012) (mem. decision).

¶3 Thompson thereafter sought post-conviction relief, arguing in his petition that he had received ineffective assistance of trial and appellate counsel. He claimed appellate counsel had failed to request or review "critical transcripts" relating to the consolidation and severance of various charges and therefore did not raise an appellate claim on that issue and that trial counsel should have requested a *Dessureault*² hearing and obtained "a cross-racial

¹The 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.

²*State v. Dessureault*, 104 Ariz. 380, 384, 453 P.2d 951, 955 (1969).

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eyewitness expert.” He also asserted he was entitled to relief under Rule 32.1(h) because he was actually innocent. After an evidentiary hearing, the trial court denied relief.

¶4 On review, Thompson repeats his claims made below, and asks this court to “reverse the trial court’s denial of [his c]laim.” Our review of the court’s factual findings after an evidentiary hearing in a Rule 32 proceeding “is limited to a determination of whether those findings are clearly erroneous”; we “view the facts in the light most favorable to sustaining the lower court’s ruling, and we must resolve all reasonable inferences against the defendant.” *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). When “the trial court’s ruling is based on substantial evidence, this court will affirm.” *Id.*

¶5 Thompson had the burden of proving his factual allegations by a preponderance of the evidence. *See* Ariz. R. Crim. P. 32.8(c). And, the trial court was “the sole arbit[er] of the credibility of witnesses” at the evidentiary hearing. *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988); *see also Sasak*, 178 Ariz. at 186, 871 P.2d at 733 (“It is the duty of the trial court to resolve any conflicts in the evidence . . .”).

¶6 The trial court’s factual determinations were supported by evidence presented at the hearing; indeed, Thompson has not argued otherwise on review or otherwise asserted how the court erred in its ruling. And in its under-advisement ruling after the hearing, the court clearly identified the claims raised and resolved them correctly in a thorough, well-reasoned order, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¶7 Although we grant the petition for review, we deny relief.