

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOHNNY RAY CALVIN,
Petitioner.

No. 2 CA-CR 2017-0172-PR
Filed September 5, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR200901726
The Honorable Jason R. Holmberg, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mark Brnovich, Arizona Attorney General
By D. Matthew Conti, Assistant Attorney General, Phoenix
Counsel for Respondent

Johnny Ray Calvin, Tucson
In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Staring and Judge Kelly¹ concurred.

ESPINOSA, Judge:

¶1 Petitioner Johnny Calvin 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). Calvin has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Calvin was convicted of conspiracy to commit transportation and possession of marijuana for sale, illegally conducting an enterprise, transportation of marijuana for sale, possession of marijuana for sale, and use of a wire communication in a drug transaction. The trial court sentenced him to concurrent and consecutive terms, totaling 12.5 years' imprisonment. Calvin thereafter sought and was denied post-conviction relief, and this court denied relief on review. *State v. Calvin*, No. 2 CA-CR 2016-0075-PR (Ariz. App. Aug. 11, 2016) (mem. decision).

¶3 Calvin initiated a second proceeding for post-conviction relief in September 2016, stating in his notice that his convictions and sentences were "in violation of [the] Constitution" because the "Court was without jurisdiction to render judgment" and apparently asserting claims of ineffective assistance of Rule 32 counsel. In his petition, he asserted there were "[n]ewly discovered

¹The 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.

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material facts of manufactured, [a]ltered, unsworn falsification, and perjury . . . relating to” the grand jury proceeding. He alleged that his indictment “was missing signatures, endorsements, certified seal and filing dates,” that the grand jury transcript had not been filed, and that various other procedural rules relating to indictments had been violated. The trial court summarily denied relief.

¶4 On review, Calvin again asserts various claims of error and misconduct in regard to the indictment and grand jury proceedings. He asks this court to order an evidentiary hearing and a change of venue. Calvin provides no basis for a change of venue, however, arguing merely that the trial court did not “rul[e] according to law[.]” We disagree, and conclude the court did not abuse its discretion in denying relief.

¶5 As a pleading defendant, Calvin waived all non-jurisdictional defects occurring before his plea. *See State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 708-09 (App. 2008) (pleading defendant waives all non-jurisdictional claims arising from alleged errors or defects antedating plea); *State v. Reed*, 121 Ariz. 547, 548, 592 P.2d 381, 382 (App. 1979) (state’s alleged failure to disclose exculpatory evidence to grand jury non-jurisdictional defect waived by pleading defendant); *see also* Ariz. R. Crim. P. 32.2(a)(3) (defendant precluded from relief based on any ground “waived at trial, on appeal, or in any previous collateral proceeding”); *State v. Lamb*, 142 Ariz. 463, 468, 690 P.2d 764, 769 (1984) (defendant waives challenge to grand jury if not timely made). And Calvin either raised or could have raised any claims related to these matters in his previous proceeding. The claims are therefore precluded. *See* Ariz. R. Crim. P. 32.2(a). Calvin’s bare assertion that his claims are ones of newly discovered evidence, which would exempt them from preclusion under Rule 32.1(e), fails because he has not established that the purported errors could not have been discovered before his plea.²

² Although Calvin asserted below claims of ineffective assistance of Rule 32 counsel and lack of jurisdiction, he has abandoned those arguments on review, and we do not address them. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall

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¶6 Therefore, although we grant the petition for review, relief is denied.

contain “[t]he reasons why the petition should be granted” and “specific references to the record”); *State v. Rodriguez*, 227 Ariz. 58, n.4, 251 P.3d 1045, 1048 n.4 (App. 2010) (declining to address argument not raised in petition for review); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (“Failure to argue a claim on appeal constitutes waiver of that claim.”). We likewise do not address Calvin’s recitation of the words “sufficient constitutional magnitude” because he has not presented a sufficient legal argument to determine their applicability to his claims. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).