

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DEBORAH ANN DELGADO,
Petitioner.

No. 2 CA-CR 2017-0205-PR
Filed October 23, 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NOT FOR PUBLICATION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. S1100CR201300595
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Deputy County Attorney, Florence
Counsel for Respondent

Deborah Delgado, Goodyear
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Deborah Delgado seeks review of the trial court’s order denying her 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). Delgado has not sustained her burden of establishing such abuse here.

¶2 After a jury trial, Delgado was convicted of second-degree burglary and aggravated assault. The trial court imposed concurrent prison terms, the longer of which was 11.25 years. This court affirmed the convictions and sentences on appeal. *State v. Delgado*, No. 2 CA-CR 2014-0419 (Ariz. App. Nov. 12, 2015) (mem. decision).

¶3 In February 2015, Delgado initiated a proceeding for post-conviction relief, arguing in her petition that newly discovered evidence entitled her to relief. Specifically, she claimed she had “finally uncovered a witness who was not previously known to trial counsel” who would testify that he had heard the victim coaching her daughters concerning their testimony and that the victim had used methamphetamine. The trial court summarily denied relief, concluding Delgado’s claims were precluded or lacked “sufficient basis in law and fact to warrant further proceedings.”

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¶4 In somewhat confusing arguments on review, Delgado mentions jury instructions, *Miranda*¹ and *Brady*² violations, her right to present a complete defense, and a lack of sufficient evidence of intent. She also argues the witness's testimony was "new evidence" that "could have changed the verdict." All of these claims, other than that of newly discovered evidence, are precluded because they were or could have been raised on appeal. *See* Ariz. R. Crim. P. 32.2(a).

¶5 Furthermore, although a claim of newly discovered evidence is not precluded, *see* Ariz. R. Crim. P. 32.2(b), Delgado has not explained how the testimony of the purported "new witness" fits the requirements of Rule 32.1(e). Based on the witness's affidavit, he was present on the day of the offense. Thus, Delgado has not established "due diligence in securing the newly discovered material facts." Ariz. R. Crim. P. 32.1(e)(2). Nor has she established that the witness's testimony "probably would have changed the verdict," Ariz. R. Crim. P. 32.1(e)(3), in view of the fact that his testimony does little to undermine evidence that Delgado entered the victim's home and fought with her. Rather, his testimony was largely impeachment of the victim and her family members, and Delgado has made no colorable showing that it would "substantially undermine[] testimony which was of critical significance at trial." *Id.*

¶6 For these reasons, although we grant the petition for review, we deny relief.

¹*Miranda v. Arizona*, 384 U.S. 436 (1966).

²*Brady v. Maryland*, 373 U.S. 83 (1963).