

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JAVIER ESCARREGA,
Petitioner.

No. 2 CA-CR 2017-0237-PR
Filed November 28, 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NOT FOR PUBLICATION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 Pima County
No. CR20130524001
The Honorable Javier Chon-Lopez, Judge

REVIEW DENIED

Javier Escarrega, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

E P P I C H, Judge:

¶1 Javier Escarrega seeks review of the trial court's orders denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. For the reasons that follow, we deny review.

¶2 Escarrega pled guilty to possession of methamphetamine for sale and possession of a deadly weapon by a prohibited possessor. The trial court sentenced him to concurrent prison terms, the longer of which is eighteen years. He sought post-conviction relief,¹ arguing his trial counsel had failed to adequately advise him with regard to the plea agreement, the state's disclosure of the weight of the methamphetamine was untimely, his plea violated due process because he had not been adequately informed about his case and thus could not "assess intelligently" whether to plead guilty, the plea lacked a factual basis, he is actually innocent, and his sentences were improper because they were based in part on "materially inaccurate information" about the facts of the case.

¶3 The trial court summarily rejected the bulk of Escarrega's claims. It determined, however, that Escarrega "may have stated a colorable claim" that his guilty plea violated due process. The court noted that Escarrega claimed to have told trial counsel that he did not sell or possess methamphetamine for sale but that counsel had nonetheless told him he "'had to plead guilty'" or face consecutive sentences, thus "implying that he believed his attorney had told him to lie when accepting the plea by admitting to the methamphetamine charge." Thus, the court concluded, Escarrega "is entitled to an evidentiary hearing on the issue of whether

¹Although Escarrega's notice of post-conviction relief was untimely, *see* Ariz. R. Crim. P. 32.4(a), the trial court concluded Escarrega could have believed his counsel had been ordered to file the notice on his behalf and the court therefore considered his petition "on its merits," *see* Ariz. R. Crim. P. 32.1(f).

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material information was misrepresented by his lawyer, whether he was misadvised, or whether he lied on the stand at the direction of his attorney.”

¶4 The trial court held an evidentiary hearing at which Escarrega and his trial counsel testified. The court concluded Escarrega had not been “denied his right to due process of law,” finding credible counsel’s testimony that he would not have permitted Escarrega to plead guilty to possession of methamphetamine for sale if Escarrega had told him he was innocent of that offense. The court denied Escarrega’s petition for post-conviction relief, and this petition for review followed.

¶5 Escarrega’s petition for review includes little more than a brief summary of the claims he raised below, and is devoid of citation to the record or meaningful legal argument. *See* Ariz. R. Crim. P. 32.9(c)(1). Additionally, to the extent he separately argues that the state committed misconduct by “mischarging” him, we do not address arguments raised for the first time on review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”); *see also State v. Ramirez*, 126 Ariz. 464, 467-68 (App. 1980). Escarrega’s failure to comply with Rule 32.9 and to present any legal argument supporting his claim justifies our summary refusal to grant review. *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”), (f) (appellate review under Rule 32.9 discretionary); *see also State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10 (2002).

¶6 We deny review.