

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ARTHUR CORNELL WRIGHT,
Petitioner.

No. 2 CA-CR 2017-0262-PR
Filed December 6, 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NOT FOR PUBLICATION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. CR20132689002
The Honorable Richard D. Nichols, Judge
The Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

Arthur Cornell Wright, San Luis
In Propria Persona

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

¶1 Arthur Wright seeks review of the trial court's orders denying his petition for post-conviction relief filed under Rule 32, Ariz. R. Crim. P., motions seeking disclosure and DNA¹ testing, and his motion for reconsideration. We will not disturb those orders unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Wright has not shown such abuse here.

¶2 Wright was convicted after a jury trial of two counts of possession of a narcotic drug for sale and one count of possession of drug paraphernalia. *State v. Wright*, 239 Ariz. 284, ¶ 1 (App. 2016). The trial court sentenced him to concurrent prison terms, the longer two of which were 10.5 years each. *Id.* We affirmed his convictions and sentences on appeal. *Id.*

¶3 Wright sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found "no legal issues of merit." Wright filed a pro se petition raising numerous claims, including several claims of trial and sentencing error, prosecutorial misconduct, and ineffective assistance of trial counsel. The trial court summarily denied relief.

¶4 Wright then filed a document entitled "Motion for Reconsideration of This Court[s] Denial of Rule 32 and Writ of Habeas Corpus A.R.S. § 13-4121 et. seq." in which he argued, essentially, that he was innocent. He also filed motions seeking disclosure of "[a]ll photo[s], description of all the items in photo[s], a full police report[, a]nd [the] dash cam recording," and requesting that certain items be tested for fingerprints and DNA. The court denied those motions, and this petition for review followed.

¹Deoxyribonucleic acid.

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¶5 On review, Wright first argues the trial court erred by failing to rule on his “Writ of Habeas Corpus,” which was part of his motion for reconsideration. We find no error. Although the trial court did not specifically address his reference to habeas relief, it denied the motion for reconsideration and therefore implicitly rejected his claim of innocence. Irrespective of how Wright chose to title his filing, the claims were properly treated as having been raised under Rule 32. See Ariz. R. Crim. P. 32.3 (application for writ of habeas corpus “raising any claim attacking the validity of [a] conviction or sentence” must be treated as Rule 32 proceeding). “In Arizona, the writ of habeas corpus may be used only to review matters affecting a court’s jurisdiction.” *In re Oppenheimer*, 95 Ariz. 292, 297 (1964). Wright claimed no jurisdictional defect.

¶6 Wright next claims that his trial, appellate, and Rule 32 counsel rendered ineffective assistance. We first observe that, in his petition below, Wright claimed only that his trial counsel had been ineffective. We do not address claims not raised below. 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). And, in any event, as a non-pleading defendant, Wright has no constitutional right to the effective assistance of Rule 32 counsel. See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4 (App. 2013).

¶7 Wright does not meaningfully challenge the trial court’s finding that he did not make a colorable claim of ineffective assistance of trial counsel. See *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006) (“To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.”); accord *State v. Kolmann*, 239 Ariz. 157, ¶ 9 (2016). He contends on review that counsel failed to argue “actual innocence” or “mere presence,” but ignores the court’s statement that counsel had, in fact, “presented a defense of mere presence, arguing that [Wright] was in the car but the drugs were not his.” And, although he argues that counsel should have sought DNA testing of various items, he did not raise this argument below; we therefore do not consider it. See Ariz. R. Crim. P. 32.9(c)(1)(ii); *Ramirez*, 126 Ariz. at 467-68.

¶8 Wright further argues that the trial court erred by denying his request for DNA testing. But his request was based solely on Rule 15.1, Ariz. R. Crim. P., which does not apply to post-conviction proceedings. See *Canion v. Cole*, 210 Ariz. 598, ¶ 9 (2005). Post-conviction DNA testing is

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permitted under A.R.S. § 13-4240. *See also* Ariz. R. Crim. P. 32.12. Wright has not argued though that the requirements of that law were met. *See State v. Bolton*, 182 Ariz. 290, 298 (1995) (insufficient argument waives claim on review).

¶9 For much the same reason, we also reject Wright's argument that the trial court erred by denying his request for various photographs and police reports. The sole authority Wright cited in that request was Rule 15.1, and, as we have noted, that rule does not apply to post-conviction proceedings. *See Canion*, 210 Ariz. 598, ¶ 9. Wright has not developed any argument that the trial court erred by denying this request. *See Bolton*, 182 Ariz. at 298.

¶10 We grant review but deny relief.