IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ERON GONZALES CORRALES,
Petitioner.

No. 2 CA-CR 2017-0293-PR
Filed January 18, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Maricopa County
No. CR1994010090001DT
The Honorable David B. Gass, Judge
The Honorable John Rea, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mark Brnovich, Arizona Attorney General
By Adam Jay Schwartz, Assistant Attorney General, Phoenix
Counsel for Respondent

The Nolan Law Firm, PLLC, Mesa
By Todd E. Nolan and Cari McConeghy Nolan
Counsel for Petitioner

MEMORANDUM DECISION

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

E P P I C H, Judge:

¶1 Petitioner Eron Corrales seeks review of the trial court's orders denying his successive, untimely 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 (App. 2007). Corrales has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement in 1995, then sixteen-year-old Corrales pled guilty to first-degree murder for an offense he had committed the previous year, and the trial court sentenced him to a stipulated sentence of life in prison without the possibility of release for twenty-five years.[1] In 1997, almost two years after he was sentenced, Corrales filed a pro se notice of post-conviction relief asserting he intended to raise claims of ineffective assistance of trial counsel and that his untimely filing was through no fault of his own. *See* Ariz. R. Crim. P. 32.1(a), (f). In October 1997, the court dismissed Corrales's untimely notice, finding he had been advised both orally and in writing of his rights of review after conviction, trial counsel was not obligated to file a notice of post-conviction relief on his behalf, and,

[1]Corrales was prosecuted as an adult. In the factual basis given in support of his guilty plea, he admitted to the premeditated shooting of the fifteen-year-old victim. In addition, the record established that Corrales had confessed details regarding the shooting and the disposal of the victim's body to several other people, including an anonymous source; his then-girlfriend; and another individual, whom he had told about his plans to kill the victim a week and a half before the shooting and afterward. Yet another individual, J.L., first reported to police that he had arrived at Corrales's house shortly after the victim had been killed, but he later admitted he was present when Corrales killed the victim. J.L. provided specific details of the shooting and reported that Corrales had forced him to help dispose of the victim's body.

in any event, he had "fail[ed] to specify any claims he would raise in a delayed Petition for Post-Conviction Relief."

¶3 In 2013, Corrales filed a second notice of post-conviction relief,[2] stating there was newly discovered evidence relevant to his guilty plea, reasserting his failure to file a timely notice of post-conviction relief was without fault on his part and was the result of ineffective assistance of counsel and the denial of the right to counsel, and maintaining he was entitled to relief based on a significant change in the law and his actual innocence. *See* Ariz. R. Crim. P. 32.1(a), and (e)-(h). In October 2013, the trial court dismissed his claims made pursuant to Rule 32.1(a), (f), and (g). However, the court permitted Corrales to file a petition on his claims of newly discovered evidence and actual innocence under Rule 32.1(e) and (h), based on the affidavit of E.G., a witness who had come forward in 2012 stating she had seen an individual, J.L., kill the victim. The court conducted a two-day evidentiary hearing on the claim of newly discovered evidence in April 2016, at which Corrales, trial counsel, E.G., and Corrales's parents testified. The court was also presented with affidavits by Corrales, trial counsel, and E.G.

¶4 In its September 2016 under advisement ruling, the trial court found E.G.'s "reasons for remaining silent for so many years to be less than plausible." The court "doubt[ed] the credibility" of E.G.'s testimony for the following reasons: she was currently incarcerated for a felony offense; although her second affidavit dated December 2, 2013 stated she was not related to or friends with Corrales, she testified to the contrary at the evidentiary hearing and prison records showing visits with Corrales before either of her affidavits were prepared belied her attestation; and, "[E.G.]'s account of the murder and her view of it were inconsistent with other descriptions of the alley and canal behind the Corrales residence where the murder took place." The court further noted there was "significant evidence" that Corrales's guilty plea was "knowing, intelligent, and voluntary, and that there was a factual basis for it."

¶5 To prevail on a claim of newly discovered evidence, Corrales must "establish that the evidence was discovered after trial although it existed before trial; that it could not have been discovered and produced at trial through reasonable diligence; that it is neither cumulative nor impeaching; that it is material; and that it probably would have changed the verdict" or sentence. *State v. Saenz*, 197 Ariz. 487, ¶ 7 (App. 2000). This

[2]Although designated as a "notice," the pleading is forty pages long.

court has stated that "Rule 32.1(e) is applied quite restrictively to overturn guilty pleas," primarily because by pleading guilty a defendant waives all nonjurisdictional defenses. *State v. Fritz,* 157 Ariz. 139, 140 (App. 1988). And in reviewing a trial court's ruling after an evidentiary hearing, we defer to that court with respect to its assessment of the witnesses' credibility and its resolution of any conflicts in the evidence. *Id*. at 141. The trial court "is in the best position to evaluate credibility and accuracy, as well as draw inferences, [and] weigh, and balance" the evidence presented at the evidentiary hearing. *State v. Hoskins*, 199 Ariz. 127, ¶ 97 (2000), *quoting State v. Bible*, 175 Ariz. 549, 609 (1993).

¶6 On review, Corrales first argues the trial court erred by denying his claim of newly discovered evidence and asks that we reverse his conviction and sentence and grant him a new trial. Corrales submitted two affidavits by E.G., one dated August 26, 2012 (the first affidavit) and the other dated December 2, 2013 (the second affidavit). In both affidavits, E.G. asserted she had witnessed the 1994 shooting from the area behind Corrales's home and that J.L., rather than Corrales, had killed the victim. E.G. attested she "felt guilty about not coming forward" in the eighteen years since the shooting had occurred. Notably, in her second affidavit, E.G. stated she is not "related to or friends" with Corrales or any members of his family, and that she had approached the family "on [her] own" to share her recollection of the shooting.

¶7 However, E.G. testified at the evidentiary hearing that after she had visited Corrales in prison in 2012 they "became real good friends" and began "seeing each other romantically" and that she had been involved with Corrales since 2012. Notably, although E.G. testified that all of the representations in her second affidavit were "true," presumably including her statement that she was "not related to or friends with Eron Corrales or any member of the Corrales family," she nonetheless testified she had been visiting Corrales for over a year when she signed the second affidavit in 2013 and had become friendly with his family. E.G. also attested she had "approached the Corrales family on [her] own without any provocation" to tell them what she had witnessed on the night of the murder. However, as the trial court noted, Corrales "admitted unilaterally reaching out to [E.G.]'s family after many years, before she came forward"; to wit, Corrales testified that "between 2007 and 2008" he had sent a letter "reaching out" to E.G.'s brother, who later visited him in prison. E.G. similarly testified she had decided to visit Corrales in 2012 *after* she had learned that Corrales's parents had delivered a "letter" to her brother.

¶8 Corrales challenges the trial court's finding that E.G. was not a credible witness. He criticizes the court's consideration of the romantic relationship between E.G. and himself, asserting "the court was incorrect in finding that such a relationship existed prior to her coming forward with her first [a]ffidavit." The record undercuts his argument. The court questioned E.G. about the timing of her relationship with Corrales and the representations she had made in her *second* affidavit, which conflicted directly with her own testimony, as previously noted. And to the extent Corrales asserts "none of the [prison] record[s]" support the court's finding regarding the timing of E.G.'s visits with him, he has failed to direct us to any records or exhibits supporting his vague assertion, nor does it appear they are part of the record before us on review. We presume trial courts know and follow the law. *See State v. Williams,* 220 Ariz. 331, ¶ 9 (App. 2008). And in the absence of any citations to the record, we presume it supports the court's finding. *Cf. State v. Zuck*, 134 Ariz. 509, 513 (1982) ("Where matters are not included in the record on appeal, the missing portions of the record will be presumed to support the action of the trial court.").

¶9 Corrales also asserts the trial court improperly considered E.G.'s status as a convicted felon in evaluating her credibility. However, viewed in the totality of the circumstances, including the inconsistencies in her testimony, we cannot say the court abused its discretion. To the extent Corrales is asking us to reweigh the evidence, we will not do so. *See State v. Sasak*, 178 Ariz. 182, 186 (App. 1993). Corrales also contends the court incorrectly found E.G.'s description of the murder scene to be "inconsistent with other descriptions of the alley and canal behind the Corrales residence where the murder took place." However, other than generally directing this court to pages "11-59" in the transcript of the evidentiary hearing, Corrales provides no citations to the record or support for the three-page argument he presents in regard to this claim, and we thus do not consider it. *See* Ariz. R. Crim. P. 32.5(a) (petition for review must include "citations to relevant portions of the record"). "We examine a trial court's findings of fact after an evidentiary hearing to determine if they are clearly erroneous." *State v. Berryman*, 178 Ariz. 617, 620 (App. 1994). So viewed, we find no basis to disturb the court's determination of E.G.'s credibility, and concomitantly, its denial of Corrales's claim of newly discovered evidence.

¶10 Corrales next argues the trial court erred in summarily dismissing his claims of ineffective assistance of counsel and his related claim based on the "new rule" established by *Martinez v. Ryan,* 566 U.S. 1 (2012). His numerous claims of ineffective assistance are constitutional

claims that cannot be raised in this untimely, successive proceeding, and we thus do not address them, nor do we address the many assertions made in his affidavit related to those claims. *See* Ariz. R. Crim. P. 32.1(a), 32.2(a), 32.4(a). In addition, to the extent Corrales's claim based on *Martinez* can be viewed as one raised pursuant to Rule 32.1(g), this court has determined that *Martinez* did "not alter established Arizona law," and does not provide a basis for relief pursuant to Rule 32.1(g), a fact Corrales seems to acknowledge despite his argument to the contrary.[3] *State v. Escareno-Meraz,* 232 Ariz. 586, ¶ 6 (App. 2013).

¶11 Citing *Stewart v. Smith*, Corrales also contends his claims of ineffective assistance of counsel and his assertion that his plea was not knowing, intelligent, and voluntary "must be considered together and as of sufficient constitutional magnitude to escape any preclusion argument." 202 Ariz. 446, ¶ 3 (2002). As we have explained, however, the waiver principles discussed in *Stewart* do not apply to untimely proceedings like this one. *See State v. Lopez*, 234 Ariz. 513, ¶¶ 7-8 (App. 2014).

¶12 Finally, Corrales reasserts his claim pursuant to Rule 32.1(f), which provides that a pleading defendant's "failure to file a notice of post-conviction relief of right . . . within the required time was not the defendant's fault." Although such a claim can be raised in an untimely proceeding like this one, because the trial court previously considered and rejected such a claim in Corrales's first Rule 32 proceeding, he cannot relitigate it in this proceeding, which is not "the equivalent of an of-right" proceeding. *See State v. Little*, 87 Ariz. 295, 304 (1960) (doctrine of res judicata generally applies in criminal cases). For all of these reasons, we conclude the trial court did not abuse its discretion by summarily dismissing Corrales's arguments based on Rule 32.1(a), (f), and (g). And on that basis, we reject his argument that he "was entitled to an evidentiary hearing on all claims, not just the newly discovered evidence claim."

¶13 Therefore, we grant review but deny relief.

[3]Moreover, it has long been the law in Arizona that a defendant is entitled to effective representation in the plea context. *See State v. Donald,* 198 Ariz. 406, ¶¶ 9, 14 (App. 2000).