

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ANTHONY LOPEZ RIOS II,
Petitioner.

No. 2 CA-CR 2017-0344-PR
Filed January 5, 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NOT FOR PUBLICATION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
Nos. CR2014153351001DT, CR2015116610001DT, CR2015128600001DT
The Honorable Dean M. Fink, Judge

REVIEW DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Daniel Strange, Deputy County Attorney, Phoenix
Counsel for Respondent

Anthony Lopez Rios II, 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 Brearcliffe concurred.

ESPINOSA, Judge:

¶1 Petitioner Anthony Rios II seeks review of the trial court's order summarily dismissing 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 (App. 2007). Because Rios has not complied with Rule 32.9, we deny review.

¶2 Pursuant to plea agreements in three causes of action, Rios was convicted of aggravated assault, threatening or intimidating, possession of a dangerous drug, and criminal damage. In accordance with stipulations in his plea agreements, the trial court sentenced him to concurrent, enhanced prison terms, the longer of which is the stipulated term of fourteen years, to be followed by concurrent terms of probation lasting four years.

¶3 Rios timely sought post-conviction relief. Appointed counsel informed the trial court that, after communicating with Rios and reviewing "the transcripts and all relevant documents," he was "unable to discern any colorable claim" to raise in a Rule 32 petition, and Rios was granted an extension of time to file a pro se petition. In it, he asserted that the state had not properly alleged prior felony offenses, causing the court to err in sentencing him as a repetitive offender for the drug offense; the state erroneously charged him with threatening a police officer based on "false allegations of 'gang' comments and threats" and "fail[ed] to allow [him] a fair opportunity to view the [ar]rest video footage within a reasonable amount of time prior to entering into the state's plea offer." Rios additionally alleged his attorney had been ineffective in failing to raise these issues or to "negotiate terms or properly argue before the Court," and also in "allow[ing him] to make un-informed decisions."

¶4 The state filed a detailed response to Rios's petition and addressed each of his claims. In summarily dismissing the petition, the trial

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court referred to the state's response and stated it agreed that Rios had failed to state a colorable claim for relief. The court also specifically addressed Rios's opportunity to view the arrest video before entering his plea, and it found he had failed to show either deficient performance by counsel or any resulting prejudice, as required to state a colorable claim of ineffective assistance. *See State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006).

¶5 Although Rios has filed what purports to be a petition for review of the trial court's ruling, it is nothing more than a verbatim copy of his petition for post-conviction relief – apparently a photocopy – with some changes made to the title and signature pages. Thus, he does not address the court's findings, made directly and by reference to the state's response, that his claims are not colorable. His petition contains no description of the decision rendered by the court or any explanation of why he believes the court abused its discretion in rejecting his claims – all elements of a petition for review required by the relevant rule. *See* Ariz. R. Crim. P. 32.9(c)(4)(B)(ii), (iv) (petition for review must contain “a statement of issues the trial court decided that the defendant is presenting for appellate review” and “reasons why the appellate court should grant the petition”); *see also Bennett*, 213 Ariz. 562, ¶ 17 (summary denial of post-conviction relief reviewed for abuse of discretion).

¶6 Rios's failure to comply with Rule 32.9 justifies our summary refusal to grant review. *See* Ariz. R. Crim. P. 32.9(f) (describing appellate review under Rule 32.9 as discretionary); *State v. French*, 198 Ariz. 119, ¶ 9 (App. 2000) (summarily rejecting claims incorporated by reference as non-compliant with Rule 32.9), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10 (2002); *cf. State v. Bolton*, 182 Ariz. 290, 298 (1995) (insufficient argument waives claim on appellate review). Accordingly, review of the trial court's order is denied.