

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ALFREDO QUIJADA,
Petitioner.

No. 2 CA-CR 2019-0304-PR
Filed May 20, 2020

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NOT FOR PUBLICATION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 Pima County
No. CR20111320001
The Honorable Kathleen Quigley, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barton & Storts P.C., Tucson
By Brick P. Storts III
Counsel for Petitioner

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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Alfredo Quijada seeks review of the trial court’s ruling summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Quijada has not shown such abuse here.

¶2 After a jury trial, Quijada was convicted of kidnapping, assault, and two counts of sexual assault. He was sentenced to time served for assault and to consecutive twenty-eight-year prison terms for the remaining counts. We affirmed his convictions and sentences on appeal. *State v. Quijada*, No. 2 CA-CR 2012-0157 (Ariz. App. Mar. 5, 2013) (mem. decision).

¶3 Quijada subsequently sought post-conviction relief, arguing among other things that his trial counsel had been ineffective for failing to obtain DNA or fingerprint testing of a condom wrapper found at the scene and that counsel had been ineffective in failing to adequately cross-examination witnesses about discrepancies in the victim’s statements. He additionally sought and was denied DNA and fingerprint testing of the condom wrapper. We denied relief on review. *State v. Quijada*, No. 2 CA-CR 2015-0146-PR (Ariz. App. July 15, 2015) (mem. decision).

¶4 In August 2019, Quijada filed a second petition for post-conviction relief, essentially repeating his claims of ineffective assistance of counsel and arguing he was entitled to fingerprint and DNA

¹ Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

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testing of the condom wrapper. The trial court summarily denied relief, concluding Quijada could not raise his claims in a successive petition. This petition for review followed.

¶5 On review, Quijada repeats the claims made below. But he does not meaningfully argue that he is entitled to raise these claims in an untimely, successive proceeding like this one. He states only that the trial court applied the “wrong standard” in finding his claims precluded, without further argument or explanation. Quijada’s claims of ineffective assistance of counsel are claims of constitutional error falling under Rule 32.1(a). *See State v. Petty*, 225 Ariz. 369, ¶ 11 (App. 2010). As such, even if it were not precluded because it had already been raised and rejected, *see* Ariz. R. Crim. P. 32.2(a)(2), it cannot be raised in an untimely, successive petition like this one, *see* Ariz. R. Crim. P. 32.4(b)(3)(A).

¶6 Quijada also repeats his argument that he is entitled to have the condom wrapper tested for DNA pursuant to A.R.S. § 13-4240(B). The trial court did not err in summarily rejecting this claim. Section 13-4240(B) requires the court to order DNA testing of evidence if, inter alia, “[a] reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through deoxyribonucleic acid testing.” As the court correctly noted, whether testing of the condom wrapper could yield exculpatory evidence was litigated and resolved in Quijada’s first post-conviction proceeding. *See Crosby-Garbotz v. Fell*, 246 Ariz. 54, ¶ 11 (2019) (issue preclusion applies in criminal cases).

¶7 We grant review but deny relief.