

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LUIS ENRIQUE ORTEGA,
Petitioner.

No. 2 CA-CR 2020-0043-PR
Filed June 24, 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NOT FOR PUBLICATION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. CR20071579001
The Honorable Renee T. Bennett, Judge

REVIEW GRANTED; RELIEF DENIED

Luis Enrique Ortega, Florence
In Propria Persona

STATE v. ORTEGA
Decision of the Court

MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 Petitioner Luis Ortega seeks review of the trial court’s order dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.¹ “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). Ortega has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Ortega was convicted of two counts each of sexual abuse of a minor under the age of fifteen, child molestation, sexual conduct with a minor under the age of fifteen, and threatening or intimidating. The trial court sentenced him to prison terms totaling fifty-seven years. On appeal, we vacated one conviction of child molestation but otherwise affirmed his convictions and sentences. *State v. Ortega*, 220 Ariz. 320 (App. 2008). He has previously sought and been denied post-conviction relief on at least four occasions. *See State v. Ortega*, No. 2 CA-CR 2019-0119-PR (Ariz. App. Aug. 20, 2019) (mem. decision); *State v. Ortega*, No. 2 CA-CR 2018-0316-PR (Ariz. App. Jan. 18, 2019) (mem. decision); *State v. Ortega*, No. 2 CA-CR 2013-0014-PR (Ariz. App. July 2, 2013) (mem. decision); *State v. Ortega*, No. 2 CA-CR 2010-0001-PR (Ariz. App. Apr. 27, 2010) (mem. decision).

¶3 In January 2020, Ortega filed another petition for post-conviction relief, claiming he was entitled to relief based on due process violations, a significant change in the law, and newly discovered evidence. His arguments, citing *Z.W. v. Foster*, 244 Ariz. 478 (App. 2018),

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.

STATE v. ORTEGA
Decision of the Court

were all based on the use of the term “victim” instead of “alleged victim” at trial. The trial court noted that claims relating to this terminology had been raised in Ortega’s previous proceedings and concluded that the claims did not show a significant change in the law or newly discovered evidence. The court therefore summarily dismissed the petition.

¶4 On review, Ortega contends the trial court abused its discretion in summarily dismissing his claims.² In his previous proceeding, however, Ortega raised the same claims regarding *Z.W.* and the use of the term “victim,” albeit couched in slightly different terms. That being so, they are precluded in this successive proceeding. *See* Ariz. R. Crim. P. 32.2(a)(2), (b). The court, therefore, did not abuse its discretion in dismissing them. *See* Ariz. R. Crim. P. 32.2(b).

¶5 We grant the petition for review, but deny relief.

²Ortega also argues the trial court abused its discretion in denying his “motion requesting acquisition of legal references.” In denying the motion the court cited the guidelines put in place by the Arizona Department of Corrections for access to legal materials. Ortega argues those guidelines do not allow him access to “case law” that he asserts is necessary to “reasonably understand” the court’s determination. In its ruling the court cited *Z.W.*, but otherwise relied predominantly on the Arizona Rules of Criminal Procedure, which are available under the ADOC guidelines. *See* Ariz. Dep’t of Corrs. Order 902.02(2.1). Ortega has not explained how the remaining citation by the court was necessary to his understanding of its ruling.