

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RUBEN CASILLAS BRITO,
Petitioner.

No. 2 CA-CR 2020-0102-PR
Filed August 31, 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NOT FOR PUBLICATION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. CR20142136001

The Honorable Howard Fell, Judge Pro Tempore

REVIEW DENIED

Ruben C. Brito, Florence
In Propria Persona

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MEMORANDUM DECISION

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

STARING, Presiding Judge:

¶1 Petitioner Ruben Brito seeks review of the trial court's order dismissing his petition for post-conviction relief, filed pursuant to Rule 33, 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). Because Brito failed to comply with the requirements of Rule 33, we deny review.

¶2 Pursuant to a plea agreement, Brito was convicted of child molestation, second-degree child molestation, and second-degree sexual conduct with a minor. The trial court sentenced him to a minimum prison term of ten years on the child molestation charge and suspended the imposition of sentence on the remaining charges, placing Brito on concurrent twenty-year terms of probation to begin upon his release from prison.

¶3 Brito sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was unable to find any "legal issues of merit" to argue. After Brito failed to file a supplemental pro se petition, the trial court dismissed his notice on July 7, 2017. He thereafter filed a "Notice of Complaint," arguing appointed counsel should be compelled to file a petition for post-conviction relief on the merits. The court denied the motion, noting counsel had properly complied with the procedures of *Montgomery v. Sheldon*, 181 Ariz. 256 (1995).

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). "Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules." *State v. Mendoza*, ___ Ariz. ___, n.1, 467 P.3d 1120 (App. 2020) ("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'" (quoting Ariz. Sup. Ct. Order R-19-0012)).

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¶4 On October 16, 2017, Brito filed a second notice of post-conviction relief. The trial court again appointed counsel, who also filed a notice stating he had found “no colorable issues to raise in the[] post-conviction proceedings.” In a pro se supplemental brief, however, Brito argued he had received ineffective assistance of trial counsel, had been “denied his right to a speedy trial,” and had been “forced and coerced” to enter his guilty plea. The court summarily denied relief.

¶5 After Brito initially filed a notice of appeal, this court extended the time for him to file a petition for review. He thereafter filed his petition for review, which was a photocopy of his petition and reply that had been filed in the trial court, along with a copy of the state’s response with some handwritten notes on it. This in no way conforms to the requirements of Rule 33.16(c)(2) and (d), and justifies our summary refusal to grant review. *See id.* (petition for review must contain “reasons why the appellate court should grant the petition” and “specific references to the record,” but “must not incorporate any document by reference, except the appendix”), (k) (appellate review discretionary); *see also State v. Bolton*, 182 Ariz. 290, 298 (1995) (insufficient argument waives claim); *State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013); *State v. French*, 198 Ariz. 119, ¶ 9 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10 (2002).

¶6 We deny the petition for review.