

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LUIS G. MARTINEZ,
Petitioner.

No. 2 CA-CR 2020-0152-PR
Filed December 8, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201601534
The Honorable Jason Holmberg, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Thomas C. McDermott, Bureau Chief, Florence
Counsel for Respondent

Czop Law Firm P.L.L.C., Higley
By Steven Czop
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 Luis Martinez seeks review of the trial court’s ruling dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We will not disturb that ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Martinez has not met his burden of establishing such abuse here.

¶2 After a jury trial, Martinez was convicted of nine counts of child molestation, seven counts of sexual conduct with a minor, seven counts of sexual abuse, and one count of sexual assault. The convictions were based on incidents involving ten victims over more than thirty years. The trial court sentenced Martinez to two consecutive life sentences, followed by consecutive, presumptive prison terms totaling 283.5 years. This court affirmed his convictions and sentences on appeal. *State v. Martinez*, No. 2 CA-CR 2016-0349 (Ariz. App. Dec. 4, 2017) (mem. decision).

¶3 In December 2019, the trial court granted Martinez leave to file a delayed notice of post-conviction relief. Martinez subsequently filed the notice, and the court appointed Rule 32 counsel. In his petition, Martinez asserted that trial counsel had been ineffective by failing to develop the defense theory through the testimony of M.P.; “to recognize counts not established by the evidence” and to object to amendments to the indictment; to object to several incidents of hearsay; to object to and rebut the testimony of the state’s expert witness on victims of sexual abuse; “to

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. 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.’” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) (quoting Ariz. Sup. Ct. Order R-19-0012). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *Id.*

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recognize, object, and ask for a mistrial when two . . . victims testified about other sexual acts not charged”; to object when a detective “confirm[ed]” witnesses’ statements, resulting in “vouching by the [s]tate”; and to request a settlement conference.²

¶4 The trial court summarily dismissed Martinez’s petition. It determined that his claim of ineffective assistance of trial counsel was not colorable, explaining that for each of the purported instances Martinez had failed to establish either that counsel was deficient or that Martinez was prejudiced thereby. This petition for review followed.

¶5 On review, Martinez challenges the trial court’s summary dismissal of his petition. Without adequately reasserting any of the instances raised below, he maintains his claim of ineffective assistance “would probably have changed the verdicts” and he “should have been given the opportunity to develop his claim through an evidentiary hearing.” He maintains that his “alleged concerns about trial counsel are significant enough to establish his burden to demonstrate that without the errors at least some of the verdicts would probably have changed.”

¶6 “If, after identifying all precluded and untimely claims, the court determines that no remaining claim presents a material issue of fact or law that would entitle the defendant to relief under this rule, the court must summarily dismiss the petition.” Ariz. R. Crim. P. 32.11(a). Put another way, a defendant is entitled to an evidentiary hearing only if his petition for post-conviction relief presents a colorable claim—one that, “if true, would probably have changed the verdict or sentence.” *State v. Kolmann*, 239 Ariz. 157, ¶ 8 (2016) (emphasis omitted) (quoting *State v. Amaral*, 239 Ariz. 217, ¶ 11 (2016)).

¶7 Martinez seems to misapprehend what constitutes a colorable claim in the context of ineffective assistance of counsel. It is not the

² Martinez also summarily alleged that trial counsel had been ineffective by failing to recognize that “count seven of the indictment was outside the statute of limitations” and to object to a “very questionable” exchange between the prosecutor and a detective. Although the trial court did not expressly address these instances, we find no abuse of discretion given Martinez’s failure to develop the arguments. See Ariz. R. Crim. P. 32.7(b) (petition must include citations to relevant legal authorities); *State v. Donald*, 198 Ariz. 406, ¶ 21 (App. 2000) (to warrant evidentiary hearing, claim “must consist of more than conclusory assertions”).

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significance of the claim that matters, but whether he has established “that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced [him].” *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). And a “[f]ailure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim.” *Id.*

¶8 Here, the trial court addressed each of Martinez’s purported instances of ineffective assistance, determining he had either failed to establish that trial counsel’s conduct fell below reasonable standards or that Martinez was prejudiced. However, Martinez fails to identify any error with that analysis. We therefore deem any such argument waived. See Ariz. R. Crim. P. 32.16(c)(4) (“A party’s failure to raise any issue that could be raised in the petition for review or cross-petition for review constitutes a waiver of appellate review of that issue.”).

¶9 To the extent Martinez is attempting to argue that all the purported instances when considered together amount to ineffective assistance, our supreme court has not recognized the cumulative error doctrine in this context. See *State v. Pandeli*, 242 Ariz. 175, ¶ 69 (2017). Moreover, Martinez has failed to adequately develop any such argument, and we therefore deem it waived. See Ariz. R. Crim. P. 32.16(c)(2)(D) (petition must include reasons why court should grant relief and citations to supporting legal authority, if known); *State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (failure to develop argument waives claim on review).

¶10 Accordingly, we grant review but deny relief.