

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ANTHONY WOOD MAGUIRE,  
*Petitioner.*

No. 2 CA-CR 2020-0154-PR  
Filed October 1, 2020

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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NOT FOR PUBLICATION  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).*

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Petition for Review from the Superior Court in Maricopa County  
No. CR2015112642002DT  
The Honorable Annielaurie Van Wie, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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Anthony Wood Maguire, Douglas  
*In Propria Persona*

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MEMORANDUM DECISION

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

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V Á S Q U E Z, Chief Judge:

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

¶2 After a jury trial, Maguire was convicted of first-degree burglary, kidnapping, and four counts of aggravated assault. The trial court sentenced him to concurrent prison terms, the longest of which is twenty-five years. We affirmed his convictions and sentences on appeal. *State v. Maguire*, No. 1 CA-CR 16-0004 (Ariz. App. Jan. 24, 2017) (mem. decision). Maguire then filed a petition for post-conviction relief, which the trial court denied. This court denied relief on review. *State v. Maguire*, No. 1 CA-CR 18-0462 (Ariz. App. Sept. 13, 2018) (mem. decision).

¶3 While Maguire’s petition for review was pending, Maguire filed a notice of post-conviction relief raising a claim of newly discovered evidence—specifically, that “one person committed perjury multiple times during their testimony at [his] trial.” The trial court appointed counsel, who filed a notice stating he had reviewed the record but found no “meritorious or colorable claims for relief” to raise in a post-conviction proceeding. Maguire then filed a pro se petition asserting numerous claims, specifically: there was newly discovered evidence of perjury; the prosecutor had committed misconduct by vouching for the witness’s

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<sup>1</sup> 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. Mendoza*, 249 Ariz. 180, n.1 (App. 2020).

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credibility; the reasonable doubt instruction given to the jury had “lowered the standard of proof”; his trial, appellate, and previous Rule 32 counsel had been ineffective; and the judge had committed misconduct at trial and in his previous Rule 32 proceeding.

¶4 The trial court summarily dismissed Maguire’s petition. It concluded that all Maguire’s claims were precluded except his claim of newly discovered evidence and further noted that his claims of ineffective appellate and Rule 32 counsel were untimely. With regard to Maguire’s newly discovered evidence claim, the court determined that the documents Maguire had submitted did not establish the witness had been untruthful, that some of the information could have been discovered before trial and, in any event, would have had no value except for impeachment and would not have been material nor changed the verdict. This petition for review followed.

¶5 In his petition for review, Maguire first argues the trial court erred in rejecting his claim of newly discovered evidence under Rule 32.1(e). Relying on a letter from the Maricopa County Superior Court, Maguire asserted the witness had lied about being married to his codefendant. Even assuming the witness’s testimony was false, the evidence Maguire identified would have constituted mere impeachment evidence and, as such, does not warrant relief under Rule 32.1(e). Rule 32.1(e)(3) excludes impeachment evidence from the definition of newly discovered material facts unless it would have “substantially undermine[d] testimony that was of such critical significance that the impeachment evidence probably would have changed the judgment or sentence.” Maguire has not argued that requirement is met here.

¶6 Maguire next asserts his claim of prosecutorial vouching is not precluded because it depends on the evidence of alleged perjury. He asserted below that the prosecutor had improperly referred to the witness’s marriage to his codefendant to bolster her credibility. But, even if Maguire had established the witness committed perjury, there is no evidence the prosecutor was aware of that fact. And the prosecutor’s statements about the witness’s marriage do not constitute improper vouching because the prosecutor neither relied on facts not in evidence nor placed the prestige of the state behind the witness. *See State v. Salcido*, 140 Ariz. 342, 344 (App. 1984).

¶7 As to his claims of ineffective assistance of trial and appellate counsel, and his claim the standard of proof had been “lowered” at trial,

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Maguire either “stands behind” the arguments made below or does not address the trial court’s conclusion that the claims are precluded. Each of these claims could have been raised on appeal or in his first post-conviction proceeding and thus are precluded under Rule 32.2(a)(3) and cannot be raised in this untimely proceeding, *see* Ariz. R. Crim. P. 32.4(b)(3)(A).<sup>2</sup> For the same reason, Maguire’s claims of judicial misconduct at trial are also precluded and untimely. *See* Ariz. R. Crim. P. 32.2(a)(3), 32.4(b)(3)(A). And, insofar as Maguire asserts the court committed misconduct during his first Rule 32 proceeding, that claim is not cognizable under Rule 32.1 – Maguire was instead required to raise any such argument in his petition for review in that proceeding.

¶8 Regarding his claim of ineffective assistance of Rule 32 counsel, Maguire asserts his claim is timely because he filed his notice while his petition for review in his first post-conviction proceeding was pending. But, regardless of when Maguire raised it, the claim is not cognizable under Rule 32 because he is not entitled to the effective assistance of Rule 32 counsel. *See State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6 (App. 2013).

¶9 Maguire also argues the trial court applied the “incorrect standard” in evaluating his post-conviction claims, asserting that the court’s reference to a “preponderance of the evidence” in its order was improper, and the proper standard is instead a “reasonable probability.” Even if we agreed the court misstated the standard, as we have explained, Maguire’s claims warranted summary rejection under any standard.

¶10 We grant review but deny relief.

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<sup>2</sup> In his petition below, Maguire identified as a claim that an identification of him had been “inherently suggestive.” In the body of his petition, however, he raised that argument as part of his claim of ineffective assistance of trial counsel. Insofar as he intended it as a separate claim, it is precluded and untimely. *See* Ariz. R. Crim. P. 32.2(a)(3), 32.4(b)(3)(A).