

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ROBERT CARRASCO GAMEZ,
Petitioner.

No. 2 CA-CR 2021-0076-PR
Filed November 5, 2021

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NOT FOR PUBLICATION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. CR20021207001
The Honorable Renee T. Bennett, Judge

REVIEW GRANTED; RELIEF DENIED

Robert Carrasco Gamez, Florence
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

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

¶2 After a jury trial, Gamez was convicted of seven counts of aggravated assault, three counts each of armed robbery and theft of a means of transportation, two counts of kidnapping, and one count each of aggravated assault on a peace officer, criminal damage of more than \$10,000, and criminal damage of more than \$2,000 but less than \$10,000. The trial court imposed concurrent and consecutive prison terms totaling forty-five years. We affirmed Gamez’s convictions on appeal, but remanded for resentencing. *State v. Gamez*, No. 2 CA-CR 2003-0192, ¶ 8 (Ariz. App. May 3, 2005) (mem. decision). The trial court imposed the same prison terms at resentencing.

¶3 Before this proceeding, Gamez has sought and been denied post-conviction relief at least three times, most recently in 2018. In June 2021, Gamez filed a notice of post-conviction relief in which he asserted his trial counsel, appellate counsel, and Rule 32 counsel had been ineffective, several claims of trial error that he characterized as “independent” of his claims of ineffective assistance, and a claim of newly discovered evidence relevant to what he asserts was “an illegal search and seizure.” He asserted that some of his claims were “of sufficient constitutional magnitude” to be exempt from preclusion and that a declaration from his codefendant was missing from his case file after it had been returned to him following an investigation by the FBI. The trial court summarily dismissed Gamez’s notice; this petition for review followed.

¶4 On review, Gamez argues the trial court erred by summarily dismissing his notice, again asserting some of his claims are not subject to preclusion because they are of sufficient constitutional magnitude to require a knowing, voluntary, and intelligent waiver. Typically, claims like

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Gamez's are waived when a defendant attempts to raise them in a successive proceeding.¹ Ariz. R. Crim. P. 32.2(a)(3). But, the rule exempts from preclusion claims raising "a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant." *Id.* Even if Gamez's claims implicated such rights, however, he has not explained why any of his claims could not have been raised in the eighteen years since his convictions. Rule 32.2(b) provides for summary dismissal when "the notice does not provide sufficient reasons why the defendant did not raise the claim in a previous notice or petition, or in a timely manner." Thus, the trial court did not err in summarily dismissing Gomez's most-recent notice of post-conviction relief.

¶5 We grant review but deny relief.

¹Gamez appears to have abandoned his claim of newly discovered evidence.