

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JORGE ANTONIO RAMIREZ,
Petitioner.

No. 2 CA-CR 2021-0101-PR
Filed March 9, 2022

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NOT FOR PUBLICATION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 Cochise County
Nos. CR201700343 and CR201700384
The Honorable Timothy B. Dickerson, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Brian M. McIntyre, Cochise County Attorney
By Michael Powell, Deputy County Attorney, Bisbee
Counsel for Respondent

Daniel J. DeRienzo, Prescott Valley
Counsel for Petitioner

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MEMORANDUM DECISION

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

BREARCLIFFE, Judge:

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

¶2 After jury trials in two separate causes, Ramirez was convicted of theft of a means of transportation, possession of drug paraphernalia, possession of methamphetamine for sale, and possession of marijuana. The trial court sentenced him to an 11.25-year prison term for the theft conviction and to concurrent prison terms on the drug charges, the longest of which was 15.75 years. This court affirmed all the convictions on appeal. *State v. Ramirez*, No. 2 CA-CR 2018-0355 (Ariz. App. Jan. 8, 2020) (mem. decision); *State v. Ramirez*, No. 2 CA-CR 2018-0356 (Ariz. App. Dec. 5, 2019) (mem. decision).

¶3 Ramirez initiated a proceeding for post-conviction relief in a combined notice of post-conviction relief, asserting claims of ineffective assistance of counsel and prosecutorial misconduct. He specifically alleged that trial counsel had “promised and guaranteed that he would win [the] cases,” leading him to reject plea offers from the state he would otherwise have accepted and that counsel had been drinking alcohol during the trial. The trial court summarily denied relief as to the claim of prosecutorial misconduct, but set an evidentiary hearing on the claim of ineffective assistance. After the hearing, the court denied relief.

¶4 On review, Ramirez contends the trial court abused its discretion in rejecting as hearsay testimony from certain witnesses, in declining to take judicial notice of other criminal matters in which similar claims had been raised against trial counsel, and in its weighing of the

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evidence presented at the hearing.¹ Our review of the court's factual findings "is limited to a determination of whether those findings are clearly erroneous"; we "view the facts in the light most favorable to sustaining the lower court's ruling, and we must resolve all reasonable inferences against the defendant." *State v. Sasak*, 178 Ariz. 182, 186 (App. 1993). When "the trial court's ruling is based on substantial evidence, this court will affirm." *Id.* And, "[e]vidence is not insubstantial merely because testimony is conflicting or reasonable persons may draw different conclusions from the evidence." *Id.*

¶5 Ramirez first argues that the trial court erred in its evidentiary rulings at the hearing. He contends "[t]he trial court abused its discretion by refusing to consider reliable testimony from [his] family [and girlfriend] regarding promises and guarantees that were made to him by trial counsel." Ramirez does not, however, direct us to specific testimony or rulings by the court as required by Rule 32.16(c)(2)(C). In our review of the record multiple hearsay objections were sustained and overruled and the statements objected to varied widely. "Judges are not like pigs, hunting for truffles buried in [the record]," *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991), and we therefore deem this argument waived, *State v. Sanchez*, 200 Ariz. 163, ¶ 8 (App. 2001) (failure to develop argument as required by criminal rules waives argument).

¶6 Ramirez also maintains the trial court abused its discretion in refusing to "take judicial notice of two other matters in which other, unrelated defendants raised similar claims about" trial counsel. He again fails to direct us to this ruling in the record, but in our discretion we address this claim. See *State v. Aleman*, 210 Ariz. 232, ¶ 24 (App. 2005) ("[W]aiver is a procedural concept that courts do not rigidly employ in mechanical fashion."). Ramirez asked the court "to take judicial notice of the fact that there [we]re other" Rule 32 proceedings "pending in th[e] courthouse involving" trial counsel and other defendants who had made similar claims

¹Ramirez does not argue his claim of prosecutorial misconduct on review, and we therefore do not address the trial court's dismissal of that claim. See Ariz. R. Crim. P. 32.16(c)(2)(D); *State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (defendant waived claim when he did not "develop the argument in any meaningful way" on review); *State v. Rodriguez*, 227 Ariz. 58, n.4 (App. 2010) (declining to address argument not raised in petition for review).

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regarding counsel's promises to them. He argued that these proceedings had "bearing on" the court's credibility analysis.

¶7 Absent an objection, a court can take judicial notice of its own records from another case. *State v. Rushing*, 156 Ariz. 1, 4 (1988); *In re Sabino R.*, 198 Ariz. 424, ¶ 4 (App. 2000) ("It is proper for a court to take judicial notice of its own records or those of another action tried in the same court."). But, pursuant to Rule 201, Ariz. R. Evid., judicial notice extends to "fact[s] that [are] not subject to reasonable dispute because" they are "generally known" or "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Claims raised by other defendants in Rule 32 proceedings not yet adjudicated do not meet this standard. The trial court therefore did not abuse its discretion in declining to take judicial notice.

¶8 The remainder of Ramirez's arguments amount to a request for this court to reweigh the evidence presented at the hearing. But the trial court was "the sole arbit[er] of the credibility of witnesses" at the evidentiary hearing. *State v. Fritz*, 157 Ariz. 139, 141 (App. 1988); *see also Sasak*, 178 Ariz. at 186 ("duty of the trial court to resolve any conflicts in the evidence"). We will not reweigh the evidence presented and, because the court's ruling is supported by substantial evidence in the record, we must affirm. *See Sasak*, 178 Ariz. at 186.

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