

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 23 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0117-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ROBERT ANTHONY FIMBREZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20052606

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Robert A. Fimbrez

Florence
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Robert Fimbrez was convicted after a jury trial of possession of a deadly weapon by a prohibited possessor and manufacturing, possessing, transporting, selling, or transferring a prohibited weapon. He appealed and this court affirmed. *State*

v. Fimbrez, No. 2 CA-CR 2006-0044 (memorandum decision filed Oct. 13, 2006). He now seeks this court's review of the trial court's order denying relief on grounds raised in a petition for post-conviction relief filed by appointed counsel pursuant to Rule 32, Ariz. R. Crim. P., and in his pro se petition, reply, and motion for reconsideration. Absent a clear abuse of the trial court's discretion, we will not disturb its ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In a thorough, well-reasoned minute entry, the trial court identified all claims Fimbrez had raised, either through counsel or in propria persona, and resolved them correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded that the claims raised either were not colorable or were precluded pursuant to Rule 32.2. The court repeated its ruling when it denied Fimbrez's motion for reconsideration. No purpose would be served by reiterating the court's rulings in their entirety. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Rather, we adopt the rulings.

¶3 We note, in addition, to the extent Fimbrez's argument that he had standing to challenge the validity of the search warrant is related to his nonprecluded claim of ineffective assistance of counsel, he nevertheless has not raised a colorable claim for relief. Even assuming Fimbrez had standing to challenge the warrant, he has not established the warrant was invalid and has not, therefore, sustained his burden of showing the trial court would have granted a motion to suppress evidence had counsel

filed one. Thus, Fimbrez did not raise a colorable claim that counsel's performance was deficient and prejudicial. *See Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶4 Fimbrez has not sustained his burden on review of establishing the trial court abused its discretion in denying his request for post-conviction relief. We grant the petition for review but deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge