

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LON FREDRICK COLLIER,
Petitioner.

No. 2 CA-CR 2016-0101-PR
Filed September 23, 2016

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NOT FOR PUBLICATION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. 31.24.

Petition for Review from the Superior Court in Yuma County
Nos. S1400CR200400332 and S1400CR200401016 (Consolidated)
The Honorable Lisa W. Bleich, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Jon R. Smith, Yuma County Attorney
By Charles Platt, Deputy County Attorney, Yuma
Counsel for Respondent

The Brewer Law Office, Show Low
By Benjamin M. Brewer
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Lon Collier seeks review of the trial court's order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Collier has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Collier was convicted of two counts of aggravated assault and nine counts of sexual conduct with a minor. The trial court sentenced him to consecutive, twenty-year prison terms for each count of sexual conduct, with 2.5-year prison terms for the aggravated assault to be served concurrently to those terms. We affirmed his convictions and sentences, as modified, on appeal.¹ *State v. Collier*, Nos. 1 CA-CR 07-0625, 1 CA-CR 07-0662 (Ariz. App. Jan. 29, 2009) (consol. mem. decision).

¶3 Collier then sought post-conviction relief, filing a petition arguing trial counsel had been ineffective in conducting trial and for failing to seek suppression of his statements to police on various bases, and that the state had committed misconduct. He also requested permission to interview jurors in relation to a claim of juror misconduct.

¹We modified Collier's sentence for one count of aggravated assault to one year.

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¶4 Before filing his reply to the state’s response, Collier retained new counsel and moved for an extension “to file the petition for post-conviction relief or . . . any amended petition for post-conviction relief.” The trial court granted that motion. Collier also asked the court to “question (and allow questioning by counsel)” of the jurors concerning possible misconduct. The court denied that motion after a status conference.

¶5 Collier then filed what he titled a “[s]upplemental” petition for post-conviction relief, stating the filing “add[ed] to the original petition filed in this case.” He again argued counsel was ineffective for failing to raise various suppression arguments and in conducting trial. Collier additionally argued counsel had been ineffective in failing to argue the state committed misconduct before and throughout trial. The trial court, identifying and rejecting the nine issues Collier listed in his second petition, summarily denied relief. This petition for review followed.

¶6 On review, Collier first argues the trial court “abused its discretion” because it did not “rule upon, or even acknowledge, the original petition filed in this case.”² We find no abuse of discretion. Nothing in the record suggests the court did not consider Collier’s initial petition. Although the court did not refer specifically to that petition, it stated in its ruling that it had considered “the pleadings and the records.”

¶7 In his original petition, Collier argued that counsel should have sought suppression of his statements by arguing: (1) he was arrested without probable cause; (2) law enforcement officers entered the curtilage of his home without a warrant in order to arrest him; and (3) he was improperly interrogated after his

²In his petition for review, Collier attempts to support several of his arguments by incorporating by reference his various filings in the trial court. That procedure is not permitted by our rules. *See* Ariz. R. Crim. P. 32.9(c); *State v. Bortz*, 169 Ariz. 575, 578, 821 P.2d 236, 239 (App. 1991). We therefore limit our review to the arguments raised and developed in Collier’s petition for review.

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arraignment for aggravated assault. He additionally detailed what he claimed were instances of counsel's ineffectiveness in investigating his case and at trial, and identified purported prosecutorial misconduct. In his "supplemental" petition, Collier raised largely the same arguments in addition to several new claims, including that he had not been adequately advised of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), that officers had illegally entered the "premises of [his] business," and that counsel had failed to adequately raise instances of prosecutorial misconduct. Collier has not identified any issue raised in his initial petition that he did not raise in his second. And he has not demonstrated the court failed to review his original petition, even assuming it was required to do so.³

¶8 Collier also asserts the trial court erred "in failing to make specific findings of fact and conclusions of law" in rejecting his claims. In support of this argument, however, Collier fails to cite any relevant authority, instead citing several civil cases. And he ignores Rule 32.6(c), which unambiguously permits a trial court to summarily dismiss a petition if "no . . . claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings." Although the court's ruling was somewhat cursory, it was not required to say more.⁴

³Collier requested and was granted permission to file an amended petition, not a supplement. An amended pleading is commonly understood to replace the original pleading. See *Goglia v. Bodnar*, 156 Ariz. 12, 18, 749 P.2d 921, 927 (App. 1987); *Pleading*, Black's Law Dictionary (10th ed. 2014) (contrasting "amended pleading" with "supplemental pleading"). Collier's unauthorized characterization of his pleading as a supplement did not require the trial court to consider arguments raised in his earlier pleading.

⁴We observe, however, that a detailed ruling by the trial court is beneficial to this court in conducting any review of that ruling. See *Brown v. Superior Court*, 137 Ariz. 327, 331 n.5, 670 P.2d 725, 729 n.5 (1983) ("[W]e encourage trial judges to assist reviewing courts by

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¶9 Collier further contends the trial court made various factual errors in rejecting his claims and improperly determined contested facts. But he does not actually identify any factual errors made by the court. Instead, he argues the court did not address his claims with sufficient specificity. As we have explained, it was not required to detail its reasons for rejecting his claims. And, although Collier broadly asserts he “presented colorable claims requiring an evidentiary hearing,” he has not provided in his petition for review any developed argument, including citation to legal authority, in support of that assertion or of his underlying claims. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review). Thus, he has not established the court erred by summarily rejecting his claims of ineffective assistance.⁵

¶10 Collier also argues the trial court erred in rejecting his requests to interview jurors to support his claim of juror misconduct. But this request was first raised in a motion for new trial, which the court denied, and his claim of juror misconduct was rejected on appeal. Thus, this issue is precluded. Ariz. R. Crim. P. 32.2(a)(2). Moreover, Collier cites no relevant authority in support of this

stating on the record the specific reasons for their actions.”). But a lack of detail does not warrant relief.

⁵We have, nonetheless, reviewed Collier’s petitions for post-conviction relief. Even assuming his various suppression theories are legally viable, he has identified no evidence or authority suggesting any competent attorney would necessarily have recognized and raised them, and thus that trial counsel fell below prevailing professional norms. “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *accord State v. Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d 61, 64 (2016); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). Thus, his claims of ineffective assistance fail in any event.

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argument and, accordingly, we decline to address it further. *See Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d at 683.

¶11 Although we grant review, relief is denied.