

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CARLOS RAFAEL MENDOZA,
Petitioner.

No. 2 CA-CR 2016-0228-PR
Filed October 5, 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NOT FOR PUBLICATION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 Cochise County
Nos. CR200301029 and CR200400305 (Consolidated)
The Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Carlos Rafael Mendoza, San Luis
In Propria Persona

STATE v. MENDOZA
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Carlos Mendoza 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 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, 166 P.3d 945, 948 (App. 2007). Mendoza has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Mendoza was convicted of first-degree murder, kidnapping, and tampering with physical evidence. The trial court sentenced him to concurrent prison terms of twenty-five years on the murder conviction and twenty-eight years on the kidnapping, as well as a consecutive term of 4.5 years for tampering with evidence. Noting the trial court had been without authority to impose the sentence it did on the murder charge, but the state had not filed a cross-appeal, this court affirmed his convictions and sentences. *State v. Mendoza*, Nos. 2 CA-CR 2004-0253, 2 CA-CR 2004-0254 (Ariz. App. Apr. 12, 2007) (consol. mem. decision). Mendoza thereafter sought and was denied post-conviction relief, and this court denied relief on review. *State v. Mendoza*, No. 2 CA-CR 2008-0365-PR (Ariz. App. Apr. 29, 2009) (mem. decision).

¶3 Mendoza again sought post-conviction relief in 2012, and appointed counsel filed a notice stating he had reviewed the record and was “unable to find any claims for relief to raise in th[e] post-conviction proceeding.” When Mendoza failed to file a supplemental pro se petition in the time allotted, the trial court dismissed the proceeding.

STATE v. MENDOZA
Decision of the Court

¶4 In 2015, Mendoza filed another notice of post-conviction relief. Appointed counsel filed a notice stating she was “unable to find a tenable issue to submit to th[e] Court pursuant to” Rule 32. In a supplemental pro se petition, however, Mendoza argued trial and first Rule 32 counsel had been ineffective. The trial court summarily denied relief.

¶5 On review, Mendoza again claims he received ineffective assistance of trial and first Rule 32 counsel and argues the trial court erred in dismissing his claims. But we agree with the trial court that his claims are precluded. The only claims that may be raised in a successive, untimely proceeding such as this one are claims pursuant to Rule 32.1(d), (e), (f), (g), or (h). Ariz. R. Crim. P. 32.4(a). Mendoza’s claims solely arise under Rule 32.1(a) and are therefore precluded and barred as untimely. *See id.*

¶6 Mendoza contends, however, that the Supreme Court’s decision in *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), dictates that the trial court erred in concluding he was not entitled to the effective assistance of Rule 32 counsel. But we determined in *State v. Escareno-Meraz* that *Martinez* did not alter established Arizona law that a non-pleading defendant, like Mendoza, is not constitutionally entitled to effective counsel in post-conviction proceedings. 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013).

¶7 Therefore, although we grant the petition for review, we deny relief.