

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 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0222-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
BENJAMIN NAJERA JR.,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2005048600001DT

Honorable Robert S. Gottsfield, Judge

REVIEW GRANTED; RELIEF DENIED

Benjamin Najera

Florence  
In Propria Persona

MILLER, Judge.

¶1 Petitioner Benjamin Najera Jr. seeks review of the trial court's January 2012 order dismissing his successive petition for post-conviction relief, filed pursuant to Rule 32.1(g), Ariz. R. Crim. P, in which he claimed the legislature's amendment of A.R.S. § 13-205(A) to make it retroactively applicable was a significant change in the law, entitling him to a new trial. We will not disturb the ruling unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 After a jury trial in November 2005, Najera was convicted of aggravated assault and sentenced to the exceptionally aggravated prison term of twenty-five years. On appeal, Najera argued, inter alia, that the trial court had erred in instructing the jury in accordance with his requested instruction that he had the burden of proving by a preponderance of the evidence the affirmative defense that he had acted in self-defense. He asserted he was entitled to the benefit of the 2006 amendment to A.R.S. § 13-205(A), which placed the burden on the state to disprove the defense of justification if raised by the defense. In May 2007, relying on the supreme court's decision in *Garcia v. Browning*, 214 Ariz. 250, 151 P.3d 553 (2007), this court affirmed Najera's conviction and sentence, rejecting his argument and concluding that the amended statute only applied to offenses committed on or after its effective date of April 24, 2006. *State v. Najera*, Nos. 1 CA-CR 06-0318, 1 CA-CR 06-0635 (consolidated) (memorandum decision filed May 22, 2007).

¶3 Najera subsequently sought post-conviction relief. The trial court dismissed the petition in July 2008, finding his claims precluded because he could have raised them on appeal. *See* Ariz. R. Crim. P. 32.2(a). This court denied his petition for review. *State v. Najera*, No. 1 CA-CR 08-0675 (order filed Oct. 26, 2009).

¶4 Thereafter, Najera again sought post-conviction relief, pointing out that the legislature had amended § 13-205(A) to make it retroactively applicable. An apparent response to *Garcia*, Senate Bill 1449, effective September 30, 2009, provided that the amended version of the statute applied retroactively to “all cases . . . that, as of April 24, 2006, had not been submitted to the fact finder to render a verdict.” 2009 Ariz. Sess. Laws, ch. 190, § 1. Denying Najera relief, the trial court found that regardless of whether the amendment regarding the retroactive applicability of the statute was a significant change in the law for purposes of Rule 32.1(g), Najera was not entitled to relief under the statute. As the court noted, the retroactivity provision made the statute applicable to cases that had not been submitted to the fact-finder as of April 24, 2006, whereas Najera’s case had been submitted to the jury on November 30, 2005, and the verdicts were rendered on December 1, 2005. This petition for review followed.

¶5 The trial court’s order dismissing Najera’s Rule 32 petition was well-reasoned and correctly identified and resolved Najera’s claims, permitting review by this or any other appellate court. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by restating any more of the ruling than we have summarized above. Rather, because the ruling is correct and Najera has not persuaded us otherwise in his petition for review and has not established the court abused

its discretion in any respect, we adopt that ruling. *Id. see also Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948 (court’s ruling reviewed for abuse of discretion). Thus, we grant Najera’s petition for review but deny relief.

/s/ Michael Miller  
MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

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