

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
AUG 15 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0234-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RENE JESSIE MOROYOQUI,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008123388001DT

Honorable Susanna C. Pineda, Judge

REVIEW GRANTED; RELIEF DENIED

Rene Jessie Moroyoqui

Florence
In Propria Persona

MILLER, Judge.

¶1 Petitioner Rene Moroyoqui 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). Moroyoqui has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Moroyoqui was convicted of second-degree murder and burglary. The trial court imposed a stipulated prison term of twenty-two years on the murder conviction and a consecutive, enhanced, presumptive prison term of 10.5 years on the burglary charge. Moroyoqui thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was “unable to find any claims for relief to raise in post-conviction relief proceedings.” The court granted Moroyoqui extensions of time in which to file a pro se petition—running until May 26, 2010. Moroyoqui did not file a petition, and the trial court dismissed the proceeding in October 2010.

¶3 In May 2012, Moroyoqui filed a petition for writ of habeas corpus, arguing his guilty plea had been entered in violation of his right to due process and he had received ineffective assistance of counsel. The trial court correctly treated the petition as one for post-conviction relief, *see* Ariz. R. Crim. P. 32.3, and summarily denied relief, concluding Moroyoqui’s claims could not be raised in a successive Rule 32 proceeding.

¶4 On review, Moroyoqui repeats the claims raised below, arguing he should be resentenced. We agree with the trial court, however, that Moroyoqui’s claims are precluded by his failure to raise them in his first Rule 32 proceeding in 2010. *See* Ariz.

R. Crim. P. 32.2(a)(3). Moroyoqui has not established that any of the exceptions to preclusion apply. *See* Ariz. R. Crim. P. 32.2(b). Therefore, the court did not abuse its discretion in dismissing Moroyoqui's petition. Although we grant the petition for review, we 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