

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

SEP 19 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                         |   |                            |
|-------------------------|---|----------------------------|
| THE STATE OF ARIZONA,   | ) | 2 CA-CR 2013-0282-PR       |
|                         | ) | DEPARTMENT A               |
| Respondent,             | ) |                            |
|                         | ) | <u>MEMORANDUM DECISION</u> |
| v.                      | ) | Not for Publication        |
|                         | ) | Rule 111, Rules of         |
| JOSHUA ALFRED MERCHAIN, | ) | the Supreme Court          |
|                         | ) |                            |
| Petitioner.             | ) |                            |
| _____                   | ) |                            |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MOHAVE COUNTY

Cause No. CR2010406

Honorable Derek Carlisle, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

The Brewer Law Office  
By Benjamin M. Brewer

Show Low  
Attorney for Petitioner

M I L L E R, Judge.

¶1 Petitioner Joshua Merchain 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). Merchain has not sustained his burden of establishing such abuse here.

¶2 After entering a plea pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970), Merchain was convicted of robbery. On April 26, 2011, the trial court suspended the imposition of sentence and placed him on probation for a term of four years. Merchain thereafter filed a notice of post-conviction relief, signing it on July 27, 2011<sup>1</sup> and checking the box indicating he would raise a claim of actual innocence. The notice was filed in the superior court on August 5, 2011. Counsel moved for a copy of the record and production of the transcript of Merchain’s hearing pursuant to Rule 11, Ariz. R. Crim. P. The court granted the motion for the record, but denied the motion to produce transcripts of the Rule 11 hearing, concluding that because Merchain’s notice had been untimely filed and he had “not demonstrated how a transcript of the Rule 11 proceedings would be relevant to” his claim of actual innocence, the transcripts were not necessary to “issues to be raised in the petition,” pursuant to Rule 32.4(d). Merchain moved for reconsideration of the ruling, but the court denied that motion as well. Merchain sought special action relief in this court, but failed to timely file proof of service, and the special action petition was dismissed.

¶3 In his petition for post-conviction relief, Merchain claimed the transcript of the Rule 11 proceeding was “necessary to determine whether [he] has colorable claims under Rule 32,” specifically claims of ineffective assistance of trial counsel and his lack of competency. He also claimed that he should be allowed to withdraw his *Alford* plea “to correct a manifest injustice” arising from his “mental issues,” that his plea had not

---

<sup>1</sup>The notice was not signed correctly when originally filed, so the superior court dismissed it on August 18, 2011. But the court reinstated the notice on September 13, 2011.

been knowing, voluntary, and intelligent because “it [wa]s unclear whether [he] clearly understood what he was doing or whether he was simply being agreeable in his answers to the court,” and that he “*may* not have been provided with effective representation during all stages of his case.” He further asserted that his “[m]ental status may have caused [him] to file an untimely Notice of Post-Conviction Relief.” The trial court summarily denied relief, pointing out that Merchain had not provided any “affidavit or statement of facts under oath” to support his claim that his notice had been untimely filed through no fault of his own and that his remaining claims were not cognizable in an untimely Rule 32 proceeding. It also noted that Merchain had abandoned any claim of actual innocence.

¶4 On review, Merchain contends the trial court abused its discretion in denying his motion for production of the Rule 11 transcript and in denying relief without an evidentiary hearing. We disagree. The court clearly identified the claims Merchain raised and resolved them correctly in thorough, well-reasoned ruling, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”). The court specifically addressed the competing opinions regarding Merchain’s competency to stand trial, as well as Merchain’s responses and appearance during the change of plea hearing.

¶5 In Merchain’s petition for review, counsel also specifically challenges the trial court’s determination that Merchain’s Rule 32.1(f) claim failed due to a lack of

evidence. He maintains he could not ethically have filed an affidavit by Merchain because of his concerns about Merchain's mental health status. But, even assuming Merchain was not competent to swear to an affidavit, other evidence, such as an affidavit by a mental health professional could have been presented to support the claim. In the absence of any evidence to support a claim that Merchain's failure to timely file his notice was not his fault, we cannot say the trial court abused its discretion in rejecting it.

¶6 Therefore, 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