

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 27 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0286-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
FRANK JAMES RACER,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008111461001SE

Honorable Helene Abrams, Judge Pro Tempore

REVIEW DENIED

William G. Montgomery, Maricopa County Attorney
By Andrea L. Kever

Phoenix
Attorneys for Respondent

Law Office of Stephen M. Johnson, Inc.
By Stephen M. Johnson

Phoenix
Attorney for Petitioner

HOWARD, Chief Judge.

¶1 Petitioner Frank Racer 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). Racer has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Racer was convicted of theft of property with a value of \$3,000 or more, but less than \$4,000. The trial court sentenced him to an enhanced, slightly mitigated nine-year prison term. Racer’s conviction and sentence were affirmed on appeal. *State v. Racer*, No. 1 CA-CR 08-0832 (memorandum decision filed June 30, 2009). Racer thereafter filed a notice of post-conviction relief, arguing in his petition that he had received ineffective assistance of trial counsel based on counsel’s failure to present two purported alibi witnesses and refusal to allow Racer to testify. The trial court summarily denied relief.

¶3 Racer’s petition for review repeats verbatim the arguments made below, and does not address how the trial court erred in concluding he had failed to present a colorable claim of ineffective assistance of counsel.¹ Indeed, the court pointed out that despite promising to do so in his petition, Racer had not filed affidavits from his proposed alibi witnesses or an affidavit supporting his claim that counsel had refused to let him testify. Racer does not address his failure to produce such evidence, but merely repeats

¹A document filed in Division One of this court on July 5, 2012 appears to be Racer’s petition for review. It is entitled “Petition for Post Conviction Relief” and counsel’s signature is dated June 2011. But it is the only document filed after the trial court’s denial of relief in June 2012 that could be construed as a petition for review.

verbatim his claim that affidavits will be forthcoming. Racer therefore has not complied with Rule 32.9(c)(1), and review is denied.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

/s/ Michael Miller

MICHAEL MILLER, Judge