

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ARTURO NEVAREZ-UGARTE,
Petitioner.

No. 2 CA-CR 2013-0426-PR
Filed December 23, 2013

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR2007162236001DT

The Honorable Julie P. Newell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By E. Catherine Leisch, Deputy County Attorney, Phoenix
Counsel for Respondent

Arturo Nevarez-Ugarte, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Arturo Nevarez-Ugarte 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). Nevarez-Ugarte has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Nevarez-Ugarte was convicted of two counts each of kidnapping, theft by extortion, and armed robbery. The trial court imposed enhanced, aggravated, consecutive and concurrent sentences totaling thirty-one years' imprisonment. Nevarez-Ugarte's convictions and sentences were affirmed on appeal. *State v. Nevarez-Ugarte*, No. 1 CA-CR 08-0305 (memorandum decision filed Apr. 2, 2009).

¶3 Nevarez-Ugarte 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 colorable claims for relief to raise." Counsel also requested an extension of time for Nevarez-Ugarte to file a pro se petition. The trial court granted that motion, as well as multiple subsequent requests for extensions of time. It denied, however, Nevarez-Ugarte's request for an interpreter.

¶4 In February 2012, Nevarez-Ugarte filed his pro se petition, which consisted of a form petition with several claims for relief checked off, but included no supporting argument or evidence. In response, the state urged the court to dismiss the

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petition as Nevarez-Ugarte had “failed to provide any facts to support the claims he checked in the petition” or to “present a material question of law or fact which would entitle him to relief.” In his reply, Nevarez-Ugarte asserted that he had not had access to a prison law library to allow him to research his claims and that a paralegal there had instructed him to complete the petition he filed and had refused to assist him further. The trial court summarily denied relief.¹

¶5 On review, Nevarez-Ugarte solely addresses the trial court’s denial of his motion for an interpreter and repeats his complaints about the legal resources available through the Arizona Department of Corrections. But, these claims are not cognizable under Rule 32 because they do not implicate Nevarez-Ugarte’s conviction or sentence but, rather, concern only the alleged post-trial denial of his rights. *See* Ariz. R. Crim. P. 32.1.

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

¹Shortly after the trial court denied relief, Nevarez-Ugarte filed another notice of post-conviction relief, which the trial court dismissed. Nevarez-Ugarte does not challenge that ruling in the petition for review currently before this court.