

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JORGE HERNANDEZ-ROQUE,
Petitioner.

No. 2 CA-CR 2013-0446-PR
Filed January 7, 2014

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NOT FOR PUBLICATION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. CR2009007446005DT

The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant, Deputy County Attorney, Phoenix
Counsel for Respondent

Jorge Hernandez-Roque, San Luis
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 Jorge Hernandez-Roque petitions this court for review of the trial court's order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Hernandez-Roque has not met his burden of demonstrating such abuse here.

¶2 Hernandez-Roque was convicted after a jury trial of conspiracy to commit possession of marijuana for sale and possession of marijuana for sale and was sentenced to presumptive, concurrent 15.75-year prison terms. We affirmed his convictions and sentences on appeal. *State v. Roque*, No. 1 CA-CR 10-0799 (memorandum decision filed July 7, 2011).

¶3 Hernandez-Roque then sought post-conviction relief, claiming his trial counsel had been ineffective in failing to interview a detective and one of Hernandez-Roque's codefendants, Juan Leyva, to obtain evidence that the "Jorge" Leyva referred to in his statement to the detective was not Hernandez-Roque, but another "Jorge" apprehended as part of the same investigation. He further asserted that, had counsel adequately investigated, he could have determined that the telephone number of several calls made to Hernandez-Roque's cellular telephone after his arrest was assigned to a telephone owned by another individual, and not to Leyva as the detective suspected. He included with his petition an affidavit by an investigator who had interviewed Leyva post-trial in which the investigator asserted Leyva had told him he had not been referring to Hernandez-Roque in his statement to the detective and did not

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“know who the person ‘Jorge’ is whom he was referring to in that statement,” he did not recognize the telephone number, and he had not called Hernandez-Roque. Hernandez-Roque also argued counsel should have filed a motion to sever Hernandez-Roque’s trial from Leyva’s. Finally, Hernandez-Roque claimed, pursuant to Rule 32.1(h), that he was actually innocent.

¶4 The trial court summarily denied relief. It concluded that Leyva’s post-trial statements were not credible and, in any event, that Leyva was unlikely to have submitted to a pre-trial interview. It further concluded a motion to sever would not have succeeded because Leyva’s statements did not “directly implicate” Hernandez-Roque. Finally, it rejected Hernandez-Roque’s claim of actual innocence, finding there was ample evidence of his guilt.

¶5 On review, Hernandez-Roque first argues the trial court erred by evaluating Leyva’s credibility without an evidentiary hearing. “To state a colorable claim of ineffective assistance of counsel,” Hernandez-Roque was required to “show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced [him].” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To demonstrate resulting prejudice, Hernandez-Roque must show a reasonable probability that the outcome would have been different absent counsel’s ineffectiveness. See *State v. Nash*, 143 Ariz. 392, 397-98, 694 P.2d 222, 227-28 (1985).

¶6 But Hernandez-Roque ignores the remainder of the trial court’s ruling—that even if Leyva’s post-trial statements were credible, he is unlikely to have agreed to an interview. And nothing in the record suggests Leyva would have done so. Thus, irrespective of Leyva’s version of events, that version would not have been presented to the jury. We therefore need not determine whether the court properly could evaluate Leyva’s credibility without an evidentiary hearing.

¶7 To the extent Hernandez-Roque otherwise contends the trial court erred in rejecting his claims, he does not develop any

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meaningful arguments.¹ Thus, he has waived any such arguments on review. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review).

¶8 Accordingly, although review is granted, relief is denied.

¹For example, Hernandez-Roque lists as an issue whether the trial court erred in rejecting his “colorable claim of ineffective assistance of trial counsel . . . for failing to investigate [a] defense of actual innocence,” but the remainder of his petition for review contains no reference to this argument.