

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RAUL EDUARDO GONZALEZ,
Petitioner.

No. 2 CA-CR 2013-0469-PR
Filed January 24, 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NOT FOR PUBLICATION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. CR2007006240001DT

The Honorable Jo Lynn Gentry-Lewis, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Raul E. Gonzalez, Indian Springs, Nevada
In Propria Persona

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Judge Espinosa and Judge Miller concurred.

ECKERSTROM, Judge:

¶1 Raul Gonzalez petitions this court for review of the trial court's order summarily dismissing his successive 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). Gonzalez has not met his burden of demonstrating such abuse here.

¶2 Gonzalez pled no contest in 2009 to seven counts of armed robbery and was sentenced to consecutive, twenty-year prison terms for each offense. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claim to raise in a Rule 32 proceeding. Despite being granted leave to do so, Gonzalez did not file a pro se petition for post-conviction relief, and the trial court dismissed the proceeding in November 2010.

¶3 In June 2012, Gonzalez filed a "Motion to Withdrawal [sic] Plea" claiming he did not remember signing the plea agreement and his trial counsel had been ineffective because he did not adequately advise him about the consequences of the plea. The trial court treated the motion as a successive petition for post-conviction relief and summarily dismissed it, concluding Gonzalez had not stated a claim upon which relief could be granted in an untimely petition. *See Ariz. R. Crim. P. 32.3, 32.6(c)*.

¶4 In his petition for review, Gonzalez merely restates his claims without addressing the trial court's conclusion that he was not entitled to relief. And we agree with the court that Gonzalez

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cannot raise these claims in an untimely, successive post-conviction proceeding. His claims for relief fall within Rule 32.1(a) and, pursuant to Rule 32.4(a), cannot be raised in an untimely petition. *See* Ariz. R. Crim. P. 32.1, 32.4(a); *see State v. Pruett*, 185 Ariz. 128, 131, 912 P.2d 1357, 1360 (App. 1995) (pleading defendant's second petition for post-conviction relief must be filed within thirty days of finality of first petition). Furthermore, he is precluded from raising them now because he could have raised them in his previous Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.1, 32.2(a)(3).

¶5 Although review is granted, relief is denied.