

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CARLOS GONZALEZ,
Petitioner.

No. 2 CA-CR 2013-0540-PR
Filed March 27, 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NOT FOR PUBLICATION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
Nos. CR2004133696001DT and CR2004022884001DT
The Honorable Lisa Flores, Judge

REVIEW DENIED

COUNSEL

Carlos Gonzalez, San Luis
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Judge Miller and Judge Brammer¹ concurred.

H O W A R D, Chief Judge:

¶1 Petitioner Carlos Gonzalez seeks review of the trial court's order dismissing his pro se, successive, and untimely petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. For the reasons that follow, we deny review.

¶2 Following separate jury trials, Gonzalez was convicted in CR2004022884001 of aggravated assault and two counts of disorderly conduct, and in CR2004133696001 of second-degree murder and aggravated assault. The trial court imposed sentences totaling forty-one years with 524 days of presentence-incarceration credit. On appeal, this court affirmed Gonzalez's convictions and modified his sentences to reflect ten additional days of presentence incarceration credit. *State v. Gonzalez*, Nos. 1 CA-CR 06-0420, 1 CA-CR 06-0421, ¶¶ 1, 15 & n.1 (consolidated) (memorandum decision filed Oct. 25, 2007). Gonzalez apparently then initiated post-conviction proceedings in both the underlying matters; those proceedings were dismissed in January and April 2010.²

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

²In December 2009, the trial court declined to take action on Gonzalez's pro se notice of post-conviction relief filed in August 2009, noting as to CR2004133696001 that Gonzalez currently was represented by counsel, who already had filed a Rule 32 petition that was pending before the court. And, although the January 2010 ruling dismissing the Rule 32 proceeding in CR2004022884001 does not appear to be part of the record before us, Gonzalez apparently does not dispute its existence.

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¶3 In January 2012, Gonzalez filed a pro se Rule 32 petition, arguing “[t]he evidence of [his] guilt was weak,” and asserting claims of ineffective assistance of trial, appellate, and Rule 32 counsel. Noting that Gonzalez previously had challenged the sufficiency of the evidence on appeal and that he could not raise claims of ineffective assistance of trial and appellate counsel in a successive or untimely petition, the trial court concluded these claims were precluded and also summarily rejected Gonzalez’s claim of ineffective assistance of Rule 32 counsel. The court also rejected Gonzalez’s claims based on newly discovered evidence under Rule 32.1(e), and actual innocence under Rule 32.1(h), pointing out that he had “provide[d] absolutely no evidence, facts, or law to support” such claims, and likewise dismissed his claim that the untimely filing of his petition was through no fault of his own pursuant to Rule 32.1(f).

¶4 On review, Gonzalez develops no argument explaining why he believes the trial court’s ruling is legally or factually incorrect, and his petition for review is a near-verbatim recitation of the claims he presented to the court in his petition below.³ See Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review must contain “reasons why the petition should be granted”). Notably, Gonzalez does not assert the court improperly dismissed his petition, much less that it abused its discretion by doing so. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

³We do not consider the supplemental authority Gonzalez has submitted in support of his claim of actual innocence or his request that we “grant[] a hearing” to permit him to “provide further testimony, witnesses, and facts in support of his innocence.” See Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues . . . decided by the trial court”); cf. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not consider issues first presented in petition for review that “have obviously never been presented to the trial court for its consideration”).

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¶5 Therefore, we deny review.