

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RICHARD MARTINEZ,
Petitioner.

No. 2 CA-CR 2014-0030-PR
Filed June 17, 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NOT FOR PUBLICATION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 Pima County

No. CR20080065

The Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Richard Martinez, Florence
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 Richard Martinez seeks review of the trial court's order denying his motion relating to restitution, which the court deemed a petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not reverse a trial court's ruling in a post-conviction-relief proceeding "absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Martinez has not sustained his burden of establishing such abuse here.

¶2 After pleading guilty to the charges against him, Martinez was convicted of four counts of armed robbery, seven counts of aggravated assault, and two counts of weapons misconduct. The trial court sentenced him to consecutive and concurrent, presumptive terms totaling twenty-one years' imprisonment. He has sought post-conviction relief repeatedly and was resentenced as a result of one of those proceedings. *See State v. Martinez*, 226 Ariz. 464, ¶¶ 3-4, 250 P.3d 241, 242-43 (App. 2011); *State v. Martinez*, No. 2 CA-CR 2011-0358-PR (memorandum decision filed Mar. 15, 2012); *State v. Martinez*, No. 2 CA-CR 2010-0066-PR (memorandum decision filed Aug. 17, 2010).

¶3 Martinez thereafter again sought post-conviction relief, arguing the trial court had abused its discretion in ordering him to pay restitution to the bank he robbed. After the court concluded his claim was precluded, Martinez filed a petition for review. This court determined that, although not precluded, his claim was without merit. *State v. Martinez*, No. 2 CA-CR 2012-0235-PR (memorandum decision filed Sept. 13, 2012).

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¶4 In November 2013, Martinez filed a “Motion to Vacate Criminal Restitution Order.” The trial court treated the motion as a petition for post-conviction relief, *see* Ariz. R. Crim. P. 32.3, and, pointing out that Martinez’s claims were identical to those previously raised and addressed, it concluded his claims were precluded and denied the motion. Martinez filed a motion for reconsideration, in which he reasserted his original claims and also maintained the court should not have entered a criminal restitution order at sentencing. Acknowledging that entry of a criminal restitution order at sentencing was fundamental error, the court vacated the order, but affirmed its order that Martinez pay restitution to the bank. Martinez filed another motion for reconsideration and a motion for change of judge, both of which were denied. He also filed another “Motion to Vacate Restitution Lien,” apparently suggesting that the trial court had unlawfully entered a lien against him under A.R.S. § 13-806(A). The trial court denied the motion.

¶5 On review, Martinez claims the trial court should have granted his motion for a change of judge, the court erred in that “on its own volition at sentencing [it] entered a restitution lien under . . . [§] 13-806,” and again argues he should not have been ordered to pay restitution to the bank. We agree with the trial court that Martinez’s claim that he should not be required to pay restitution to the bank because he did not agree to pay and because the bank was not named as a victim is precluded. *See* Ariz. R. Crim. P. 32.2(a)(2). That claim was specifically addressed, in relation to the restitution ordered at his resentencing, in Martinez’s last post-conviction relief proceeding. *See Martinez*, No. 2 CA-CR 2012-0235-PR, ¶¶ 7-8.

¶6 As to his claim that he should have been granted a change of judge, Martinez asserts summarily that the judge is biased against him and that he “cannot receive a fair and impartial hearing.” But, as the presiding judge pointed out in rejecting his request for a change of judge, “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion,” *State v. Ellison*, 213 Ariz. 116, ¶ 40, 140 P.3d 899, 912 (2006), *quoting Liteky v. United States*, 510 U.S. 540, 555 (1994). Martinez has cited nothing

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other than the judge's rulings against him as a ground for removal. The presiding judge therefore correctly denied the motion.

¶7 Martinez also argues the order that he pay restitution to the bank is unlawful "pursuant to A.R.S. [§] 13-603(A)" because the court's order "d[oes] not indicate under which statute he is to pay restitution." He further asserts the trial court's order was a "restitution lien under [§] 13-806." But, we see nothing in § 13-603(A) that requires a court to state the statute under which it is imposing restitution. Likewise, nothing in the record shows the court imposed a lien pursuant to § 13-806 on Martinez. Rather, it simply appears that the court ordered Martinez to pay restitution pursuant to A.R.S. § 13-804, as required. That statute provides that a lien is to be created, but it is separate from the provision of § 13-806, which provides a mechanism for the state or other persons to file a restitution lien.

¶8 For these reasons, although we grant the petition for review, we deny relief.