

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ROBERT L. CONRAD,  
*Petitioner.*

No. 2 CA-CR 2014-0072-PR  
Filed May 28, 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NOT FOR PUBLICATION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. CR2004018577001DT

The Honorable Kristin Hoffman, Judge

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

Robert L. Conrad, Tucson  
*In Propria Persona*

STATE v. CONRAD  
Decision of the Court

---

**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 Robert Conrad seeks review of the trial court's January 2, 2013 order dismissing his notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., his request for new trial, and motion to admit certain documents to the court file. We will not disturb the trial court's ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 Conrad was convicted after a jury trial of aggravated assault, and his conviction and sentence were affirmed on appeal. *State v. Conrad*, No. 1 CA-CR 05-1203 (memorandum decision filed Feb. 8, 2007). Conrad subsequently sought post-conviction relief, and was granted a new trial. He was again convicted of aggravated assault after the second trial; that conviction and sentence were affirmed on appeal. *State v. Conrad*, No. 1 CA-CR 10-0855 (memorandum decision filed Nov. 10, 2011).

¶3 Conrad sought post-conviction relief, raising a variety of claims in the pro se petition he filed in March 2012 after appointed counsel filed a notice in January 2012 stating she had found no issue to raise in the post-conviction proceeding. The trial court denied the petition in April 2012, and this court denied relief on review. *State v. Conrad*, No. 2 CA-CR 2013-0221-PR (memorandum decision filed Aug. 23, 2013).

¶4 In November and December 2012, while the trial court's April 2012 ruling was pending before this court, Conrad filed a notice of post-conviction relief, a request for a new trial based on newly discovered evidence, and a motion to admit a general power

STATE v. CONRAD  
Decision of the Court

of attorney granted to his mother and a document purportedly related to the withdrawal of one of his attorneys into the file. In its January 2, 2013 minute entry, the trial court implicitly treated Conrad's request for new trial as a petition for post-conviction relief, identified the claims raised, including claims of newly discovered evidence and ineffective assistance of counsel, and rejected them, stating clearly its reason for doing so.<sup>1</sup>

¶5 The claim of newly discovered evidence was based on a transcript of his trial attorney's interview of Dr. Thomas Wills, the emergency room doctor who treated the victim. The court found, inter alia, Conrad had failed to raise a claim that could be raised in this untimely and successive proceeding. With respect to the claims that could potentially be raised in this proceeding—newly discovered evidence under Rule 32.1(e) and actual innocence under Rule 32.1(h)—the court found such claims to be unsupported and subject to summary dismissal.<sup>2</sup>

---

<sup>1</sup>The trial court seems to have construed some of Conrad's arguments in his request for a new trial as arguably falling within Rule 32.1(h), Ariz. R. Crim. P.

<sup>2</sup>Conrad did not provide the trial court with a copy of the interview of Dr. Wills in this proceeding. However, shortly after the court dismissed this proceeding, Conrad filed a petition for post-conviction relief and attached a copy of the interview transcript to that petition. But that petition for post-conviction relief was addressed in the court's February 6, 2013 minute entry in which it denied relief summarily. We will only consider what was before the court when it entered its ruling on January 2, 2013, which is the ruling that is the subject of this petition for review. See Ariz. R. Crim. P. 32.9(c)(1)(ii); *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court does not address issues raised for first time in petition for review); cf. *Brookover v. Roberts Enters., Inc.*, 215 Ariz. 52, ¶ 8, 156 P.3d 1157, 1160 (App. 2007) (in reviewing ruling on motion for summary judgment appellate court only considers evidence "presented to the trial court when it addressed the motion"). Indeed, this court denied Conrad's motion requesting that this court add the interview to the record in connection with

STATE v. CONRAD  
Decision of the Court

¶6 No purpose would be served by setting forth the trial court's ruling in its entirety here. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).<sup>3</sup> Rather, because the court identified the claims and resolved them correctly and in a matter permitting review by this court, and because Conrad has not sustained his burden of establishing the court abused its discretion, we adopt the court's ruling. *Id.* Therefore, we grant this petition for review but deny relief.

---

this petition for review on the ground that if the interview transcript had been submitted to and considered by the trial court it would already be part of the record and if not, we would not consider it.

<sup>3</sup>In its minute entry, the trial court stated this was Conrad's third Rule 32 proceeding. Presumably, the court was including the post-conviction proceeding that resulted in the second trial; it appears to this court that this is the second such proceeding following the second trial.