

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MICHAEL PAUL CISNEROZ,
Petitioner.

No. 2 CA-CR 2014-0285-PR
Filed October 15, 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NOT FOR PUBLICATION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. CR2006151384001DT

The Honorable Margaret R. Mahoney, Judge

REVIEW GRANTED; RELIEF DENIED

Michael Cisneroz, Douglas
In Propria Persona

STATE v. CISNEROZ
Decision of the Court

MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Pursuant to a plea agreement, petitioner Michael Cisneroz was convicted in 2007 of two counts of second-degree murder and one count of aggravated assault. In this petition for review, he challenges the trial court's denial of relief in his second post-conviction proceeding under Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling absent a clear abuse of its discretion. See *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 In Cisneroz's initial post-conviction proceeding in 2008, appointed counsel filed a notice on April 22, 2008, stating he could not find any "viable issues or colorable claims" to raise. Two days later, the trial court gave Cisneroz forty-five days to file a pro se petition. Cisneroz filed a pro se "Motion for Rule 32 Post-Conviction Relief" on June 3, 2008, in which he claimed he felt he had been "pushed into the plea" by the fact that the court had denied his motion for new counsel and based on a statement by the settlement conference judge; he also asserted the sentence was "harsh . . . for a car accident." The court struck the petition for failure to comply with Rule 32.5 and gave him additional time to file a petition that complied with the rule. Cisneroz did not file a proper petition and the court dismissed the post-conviction proceeding. Cisneroz did not seek review of that ruling.

¶3 In March 2013, Cisneroz commenced this proceeding. In his pro se petition, he claimed he was entitled to relief pursuant to Rule 32.1(g), based on the Supreme Court's decision in *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), and pursuant to Rule 32.1(h), insisting his passenger, not he, had been driving at the time

STATE v. CISNEROZ
Decision of the Court

of the accident that gave rise to these charges. He raised multiple claims of ineffective assistance of trial counsel; although he acknowledged the claims were untimely raised, he appeared to be arguing that in light of *Martinez*, as well as *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), those claims should not be precluded, *see* Ariz. R. Crim. P. 32.2(b), but should be permitted because initial Rule 32 counsel had been ineffective in failing to raise them. Related to his claim of actual innocence, Cisneroz also seemed to be arguing he was entitled to relief based on newly discovered evidence pursuant to Rule 32.1(e).

¶4 In its March 2013 order, the trial court correctly identified and resolved the claims Cisneroz had raised; because the record and the applicable law support the ruling, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”). We note, in addition, that all non-jurisdictional defects and defenses, as well as claims of ineffective assistance of trial counsel that do not relate directly to the validity of the no contest plea, were waived by Cisneroz’s entry of the plea as to each charge. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Cisneroz has not sustained his burden on review of establishing the court abused its discretion.

¶5 Although the petition for review is granted, relief is denied.