

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

REYNALDO WILLIAM VIDAL,  
*Petitioner.*

No. 2 CA-CR 2014-0337-PR  
Filed January 9, 2015

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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NOT FOR PUBLICATION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.*

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Petition for Review from the Superior Court in Pima County  
Nos. CR20131021002 and CR20131065001  
The Honorable Scott Rash, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

Reynaldo W. Vidal, Tucson  
*In Propria Persona*

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MEMORANDUM DECISION

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

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M I L L E R, Presiding Judge:

¶1 Reynaldo Vidal seeks review of the trial court's order dismissing his 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. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Vidal has not met his burden of demonstrating such abuse here.

¶2 In two cause numbers, Vidal pled guilty to theft of a means of transportation and possession of methamphetamine. The trial court sentenced him to concurrent, partially aggravated six-year prison terms for each offense. He sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but had found "no basis for Rule 32 relief." Vidal then filed a pro se petition, arguing his enhanced sentence for possession of methamphetamine was improper, his presentence report "had numerous errors" but trial counsel had not given him time to review it, and counsel had pressured him into accepting the plea. He further asserted the victim in the theft case had "recanted," had not complied with A.R.S. § 13-1814(C) by providing an affidavit to law enforcement, and was "not the true owner" of the stolen vehicle. He claimed he had informed counsel of these facts but that counsel nonetheless denied him "a fair opportunity . . . to prove [his] innocence."

¶3 The trial court summarily denied relief. It concluded that Vidal's sentence was proper because he had admitted one historical prior conviction and that Vidal had not identified any specific error in the presentence report. The court characterized Vidal's claim that the victim had recanted as a claim of newly

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discovered evidence<sup>1</sup> and rejected it because Vidal had not specified “what the victim recanted, when he recanted, or when [Vidal] learned of it.” Finally, it rejected his claim that counsel had “pressured him to accept the plea agreement,” noting the plea colloquy “establishes the voluntariness of the plea.” Vidal then filed a “motion for review,” which the court characterized as a motion for rehearing and summarily denied.<sup>2</sup> This petition for review followed.

¶4 On review, Vidal first asserts the trial court violated his due process rights by characterizing his “motion for review” as a motion for reconsideration. He apparently believes that motion was the proper method to seek review in this court, and thus the trial court improperly kept him “from a higher court review.” But, to seek review in this court, Rule 32.9(c) requires that Vidal file his petition in this court, as he has now done, not file a motion in the trial court. Vidal has identified no error, much less a constitutional violation, in the trial court’s decision to treat his motion as a motion for reconsideration.

¶5 Vidal further contends the trial court erred in concluding he had not specified the precise time and nature of the victim’s recantation. He explains that he provided the relevant evidence both in his reply to the state’s response and in his motion for reconsideration. But Vidal’s reply contains no argument or information related to that claim. And his attempt to support his claim for the first time in his motion came too late. A motion for rehearing is limited to identifying “grounds wherein it is believed the court erred,” Ariz. R. Crim. P. 32.9(a); it is not a vehicle for raising new arguments or presenting new evidence. *Cf. State v.*

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<sup>1</sup>Vidal had indicated on his form petition that he was raising a claim of newly discovered material facts that he learned of “once [he] was in prison.”

<sup>2</sup>Although the trial court used the term “reconsideration” in referring to the motion, it apparently treated the motion as one for rehearing pursuant to Rule 32.9(a), and we therefore refer to it as such.

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*Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (trial court not required to address arguments raised for first time in motion for rehearing).

¶6 Vidal does not argue on review that the trial court erred by treating this claim as a claim of newly discovered evidence pursuant to Rule 32.1(e). But even if we instead characterize it as one pursuant to Rule 32.1(h) “that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt,” the court did not err in summarily rejecting it because Vidal failed to adequately support it in his petition. *See State v. Olquin*, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007) (reviewing court may affirm trial court for any reason supported by record). Vidal also does not argue the court erred in rejecting the other claims raised in his petition below.

¶7 We grant review, but we deny relief.