

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JERME REED NEWMAN,
Petitioner.

No. 2 CA-CR 2014-0367-PR
Filed December 4, 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NOT FOR PUBLICATION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. CR2009163018001DT
The Honorable Lisa Daniel Flores, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Diane Meloche, Deputy County Attorney, Phoenix
Counsel for Respondent

The Hopkins Law Office, P.C., Tucson
By Cedric Martin Hopkins
Counsel for Petitioner

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

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

¶2 After a jury trial, Newman was convicted of second-degree burglary and sentenced to a presumptive, 11.25-year sentence. His conviction and sentence were affirmed on appeal. *State v. Newman*, No. 1 CA-CR 10-0528 (memorandum decision filed Apr. 10, 2012). Newman then sought post-conviction relief, arguing his sentence was "grossly disproportionate and constitutes cruel and unusual punishment." The trial court summarily denied relief, concluding Newman's claim was precluded because he could have raised it on appeal.¹

¶3 On review, Newman reurges his claim that his sentence constitutes cruel and unusual punishment. He does not, however, address the trial court's conclusion that the claim is precluded. Newman could have, but did not, raise the claim on appeal. *See, e.g.,*

¹ Newman's petition for post-conviction relief also cited authority relevant to a claim of ineffective assistance of counsel, but he did not allege in his petition that counsel had been ineffective. The trial court noted that, to the extent Newman had made that claim, his argument was "too vague" to warrant consideration. Newman does not raise an ineffective assistance claim on review.

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State v. Long, 207 Ariz. 140, ¶¶ 19, 27, 83 P.3d 618, 622, 623-24 (App. 2004) (addressing disproportionality claim on appeal). Thus, it plainly is precluded pursuant to Rule 32.2(a)(3), and the trial court did not err in summarily denying relief.

¶4 We grant review but deny relief.