

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JACOB MAGALLANES,
Petitioner.

No. 2 CA-CR 2015-0023-PR
Filed April 8, 2015

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20103723001

The Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Jacob Magallanes, Kingman
In Propria Persona

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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 Jacob Magallanes seeks review of the trial court's order summarily denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Magallanes has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Magallanes was convicted of two counts of aggravated assault and sentenced to concurrent, ten-year prison terms. We affirmed his convictions and sentences on appeal. *State v. Magallanes*, No. 2 CA-CR 2011-0246 (memorandum decision filed Nov. 6, 2012). Magallanes filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but had found no claims to raise in post-conviction proceedings. Magallanes then filed a pro se petition arguing the state improperly had delayed filing a complaint following his arrest and had denied his right to counsel because it filed the complaint before he was assigned counsel. The trial court summarily denied relief, and Magallanes did not seek review of that ruling pursuant to Rule 32.9(c).

¶3 Magallanes filed a second notice of and petition for post-conviction relief, arguing that trial counsel had been ineffective in failing to advise him of a plea offer by the state. He further argued he could raise the claim in a successive proceeding pursuant to *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012). The trial

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court summarily denied relief and dismissed Magallanes's notice.¹ This petition for review followed.

¶4 On review, Magallanes repeats his claim of ineffective assistance of counsel and his argument that, pursuant to *Martinez*, he is entitled to raise the claim in a successive post-conviction proceeding. But his claim of ineffective assistance plainly is precluded because it could have been raised in his first post-conviction proceeding. See Ariz. R. Crim. P. 32.2(a). Nothing in *Martinez* alters that result. In that case, the Supreme Court addressed a defendant's equitable right to effective representation of initial post-conviction counsel in the context of default in federal habeas review. See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 5, 307 P.3d 1013, 1014 (App. 2013), citing *Martinez*, ___ U.S. at ___, 132 S. Ct. at 1315, 1319-20. It does not apply to successive post-conviction claims under Rule 32. See *Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6, 307 P.3d at 1014.

¶5 Accordingly, although we grant review, we deny relief.

¹In his notice, Magallanes stated he was entitled to raise his claim of ineffective assistance of counsel pursuant to "The Martinez Exception." The trial court, in denying relief, commented that "[t]here are many cases entitled *State v. Martinez* which address post-conviction issues, but the Court cannot find a case that would allow a second unsupported notice post appeal to go forward." We observe that Magallanes made clear in his petition—which was attached to his notice—that he was referring to *Martinez v. Ryan*.