

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SEBASTIAN PENA,
Petitioner.

No. 2 CA-CR 2015-0271-PR
Filed September 18, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2010006224007DT
The Honorable Janet E. Barton, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Robert E. Prather, Deputy County Attorney, Phoenix
Counsel for Respondent

Sebastian Pena, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Sebastian Pena 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 abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Pena has not met his burden of demonstrating such abuse here.

¶2 Following a jury trial held in his absence, Pena was convicted of trafficking in stolen property. After he was returned to custody, the trial court sentenced him to an 11.25-year prison term. We affirmed his conviction and sentence on appeal. *State v. Pena*, No. 1 CA-CR 11-0247 (memorandum decision filed June 28, 2012).

¶3 Pena sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no "colorable claims for relief to raise in post-conviction relief proceedings." Pena then filed a pro se petition arguing his trial counsel had been ineffective in failing to "recognize" that he was entitled to a twelve-person jury and by permitting him to be tried by only an eight-person jury. In his reply to the state's response, Pena raised several new arguments, including that appellate counsel had been ineffective in failing to raise various issues, that giving him less than a thirty-year sentence "just to prevent a 12 person jury" constituted "judicial vindictiveness," and that he had not been voluntarily absent at trial. The trial court summarily denied relief. It rejected Pena's claim regarding jury size and declined to address the additional arguments Pena raised in his reply. This petition for review followed the court's denial of Pena's motion for rehearing.

¶4 On review, Pena first asserts the trial court was required to address the additional arguments raised in his reply pursuant to

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Martinez v. Ryan, ___ U.S. ___, 132 S. Ct. 1309 (2012). But a trial court is not required to address claims raised for the first time in a reply. See *State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7, 221 P.3d 1052, 1054 (App. 2009). Nothing in *Martinez* alters this established rule. We therefore do not address Pena’s arguments related to those additional claims. Nor do we address his claim, raised for the first time on review, that Rule 32 counsel was ineffective. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review should contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”). To the extent Pena reurges his claim that trial counsel was ineffective in failing to raise issues related to the size of the jury, we adopt the trial court’s thorough and correct minute entry rejecting that claim. 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”).

¶5 Although we grant review, relief is denied.