

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MIGUEL DANIEL LEAL,
Petitioner.

No. 2 CA-CR 2015-0318-PR
Filed May 20, 2016

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NOT FOR PUBLICATION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. CR20053517
The Honorable D. Douglas Metcalf, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Miguel Daniel Leal, Kingman
In Propria Persona

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MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Petitioner Miguel Leal seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Leal has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Leal was convicted of sexual abuse of a minor and sexual conduct with a minor, both dangerous crimes against children. The trial court imposed consecutive, mitigated terms of imprisonment totaling 15.5 years. This court affirmed the convictions and sentences on appeal. *State v. Leal*, No. 2 CA-CR 2009-0114 (memorandum decision filed Dec. 21, 2010).

¶3 Leal initiated a proceeding for post-conviction relief, and filed a pro se petition in which he argued he had received ineffective assistance of counsel based on (1) lack of communication between himself and trial counsel; (2) trial counsel’s failure to present exculpatory evidence, take depositions, request a jury instruction, object to certain questioning, object to certain rulings relating to the state’s assertion of “flight,” or present “good character testimony”; (3) his disagreement with counsel about a particular juror who was allowed to remain on the jury; and (4) appellate counsel’s failure to raise certain arguments on appeal. He also contended his right to counsel had been violated and the trial court had erred in admitting evidence of a confrontation call, denying his motion to preclude an expert witness from testifying, denying his motion for new trial, and violating his speedy trial

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rights. And he raised various other claims of prosecutorial and police misconduct and trial error.

¶4 The trial court then allowed counsel to file two supplemental petitions in which counsel raised various claims of ineffective assistance of counsel, including some raised by Leal: trial and appellate counsel failed to (1) adequately object to a flight instruction or to present certain witnesses relating to Leal's out-of-state travel, (2) "protect [Leal's] constitutional rights" in relation to a confrontation call, (3) investigate the impact of a post-indictment automobile accident on the victim's recall, (4) subpoena rebuttal witnesses, (5) raise issues related to the state's expert witness, (6) adequately argue Leal's speedy trial rights had been violated, and, (7) request a *Willits*¹ instruction. The trial court concluded the claims raised in Leal's pro se petition were either addressed in counsel's supplemental petitions or not colorable, and ordered an evidentiary hearing on the issues raised by counsel, after which the court denied relief.

¶5 On review Leal first contends the trial court was required to return his pro se petition to him upon determining he had not provided affidavits, records, or other evidence in support of some of his claims and they therefore were not colorable. The clear language of Rule 32.5, however, requires a court to return a petition when it "fails to comply with th[e] rule." In this case, it appears the court concluded Leal failed to state colorable claims, in part based on the lack of evidence to support some of them, not that his petition had failed to comply with the requirements of Rule 32.5 as an initial matter.

¶6 Leal lists a total of twenty-five "issues" for our review, including claims relating to the flight instruction given at trial; various claims of trial error; claims of inconsistent testimony by the victim and erroneous admission of expert testimony; claimed violations of his speedy trial, due process, equal protection, privacy, property, Fifth Amendment, and Sixth Amendment rights; claims

¹See *State v. Willits*, 96 Ariz. 184, 393 P.2d 274 (1964).

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relating to the grand jury proceedings and “Interstate Compact Extradition” provisions; prosecutorial misconduct claims; claims of error in the trial court’s evidentiary rulings; and claims of ineffective assistance of counsel. To the extent these claims were raised below, *see State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980), our review of the trial court’s factual findings on the claims addressed at the hearing “is limited to a determination of whether those findings are clearly erroneous,” *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). We “view the facts in the light most favorable to sustaining the lower court’s ruling, and we must resolve all reasonable inferences against the defendant.” *Id.* When “the trial court’s ruling is based on substantial evidence, this court will affirm.” *Id.* And, “[e]vidence is not insubstantial merely because testimony is conflicting or reasonable persons may draw different conclusions from the evidence.” *Id.*; *see also State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding).

¶7 Leal had the burden of proving his factual allegations by a preponderance of the evidence. Ariz. R. Crim. P. 32.8(c). And, the trial court was “the sole arbit[er] of the credibility of witnesses” at the evidentiary hearing. *Fritz*, 157 Ariz. at 141, 755 P.2d at 446; *see also Sasak*, 178 Ariz. at 186, 871 P.2d at 733 (“It is the duty of the trial court to resolve any conflicts in the evidence.”).

¶8 Due to Leal’s failure to communicate with the court reporter ordered to produce it, a transcript of the evidentiary hearing has not been provided to this court.² In the absence of a

²This court ordered the transcript transmitted in December 2015. When it was not included in the transmittal from the trial court, this court ordered the court reporter to prepare and file it. The reporter filed an affidavit stating she had written Leal a letter explaining that he would need to provide “information that he had been declared indigent or” provide payment, but had received no reply. This court therefore vacated the order for the transcript and deemed the petition for review at issue. Leal filed a motion for reconsideration arguing he had believed he would be appointed counsel and he had not been directly ordered to pay for the

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transcript we presume the evidence supported the trial court's ruling. *See State v. Wilson*, 179 Ariz. 17, 19 n.1, 875 P.2d 1322, 1324 n.1 (App. 1993), *superseded by statute in part on other grounds*, 1996 Ariz. Sess. Laws, ch. 34, § 1, *as recognized in State v. Cons*, 208 Ariz. 409, ¶ 9, 94 P.3d 609, 613 (App. 2004). And much of Leal's argument amounts to a request for this court to reweigh the evidence presented, which we would not do, even had a transcript been provided. *See Sasak*, 178 Ariz. at 186, 871 P.2d at 733. We also do not address Leal's claims raised for the first time on review, *see Ramirez*, 126 Ariz. at 468, 616 P.2d at 928, or the claims of trial error or prosecutorial misconduct he now raises, which are precluded by his failure to raise them on appeal, *see Ariz. R. Crim. P. 32.2(a)(3)*.

¶9 Therefore, we adopt the trial court's thorough, well-reasoned ruling. *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"). And, although we grant the petition for review, we deny relief.

transcripts. He did not explain his failure to respond to the court reporter, and this court denied the motion citing the trial court's earlier order stating he would not be appointed counsel on review.