

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSE FERNANDO MCCORMICK,
Petitioner.

No. 2 CA-CR 2015-0378-PR
Filed March 9, 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NOT FOR PUBLICATION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
Nos. CR20100274001 and CR20111277011
The Honorable Brenden J. Griffin, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Jose McCormick, San Luis
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Jose McCormick seeks review of the trial court's ruling dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We review the court's dismissal for an abuse of discretion. *State v. Harden*, 228 Ariz. 131, ¶ 3, 263 P.3d 680, 681 (App. 2011). McCormick has not sustained his burden of establishing such abuse here.

¶2 In separate but contingent plea agreements, McCormick pled guilty to possession of a dangerous drug for sale, for which he was sentenced to a ten-year prison term, and attempted possession of a dangerous drug for sale, for which he was sentenced to a 3.5-year prison term. McCormick filed notices of post-conviction relief in both cause numbers, which were consolidated. Assigned counsel, citing *Lammie v. Barker*, 185 Ariz. 263, 915 P.2d 662 (1996), informed the trial court he would not file a petition for post-conviction relief. The court later dismissed the proceeding on the ground McCormick had not filed a compliant pro se petition by the deadline the court had imposed. On review, we granted relief, vacating the court's dismissal of the proceeding and remanding the case for further proceedings to give McCormick the opportunity to cure his non-compliant petition for post-conviction relief. *State v. McCormick*, No. 2 CA-CR 2013-0565-PR (memorandum decision filed May 13, 2014). On remand, McCormick filed a petition for post-conviction relief, and the trial court summarily denied relief. This court denied review of his subsequent petition for review. *State v. McCormick*, No. 2 CA-CR 2014-0381-PR (memorandum decision filed Apr. 8, 2015).

¶3 McCormick filed a notice of post-conviction relief in June 2015, which the trial court summarily dismissed concluding the

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claims raised were precluded or insufficiently supported. In August 2015, McCormick filed another notice, this time claiming violations of his rights under the Fourth Amendment to the United States Constitution, perjury by a police detective, violations of his right to due process, vindictive prosecution, and ineffective assistance of counsel. The court again summarily dismissed the proceeding.

¶4 On review, McCormick contends his claim of ineffective assistance of counsel was “under newly discovered evidence” and therefore not precluded. But the claims he presented below were that counsel failed to seek a suppression hearing or to file a motion pursuant to Rule 12, Ariz. R. Crim. P., before trial. We agree with the trial court that these claims, as presented, facially fail to meet the requirements of Rule 32.1(e). And “[i]n general, when ‘ineffective assistance of counsel claims are raised, or could have been raised, *in a Rule 32 post-conviction relief proceeding*, subsequent claims of ineffective assistance will be deemed waived and precluded.’” *State v. Swoopes*, 216 Ariz. 390, ¶ 23, 166 P.3d 945, 952 (App. 2007), quoting *State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002).

¶5 McCormick further maintains the trial court failed to address his other claims. But the court determined McCormick’s claims based on “matters of constitutional rights violations” were untimely. The court further concluded McCormick’s “pre-trial and constitutional issues” were precluded based on the court’s rulings in his previous proceedings. Thus, the court adequately addressed McCormick’s claims. *See* Ariz. R. Crim. P. 32.2, 32.6(c).

¶6 Therefore, although we grant the petition for review, we deny relief.