

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EVERESTO HARRISON JR.,
Petitioner.

No. 2 CA-CR 2015-0442-PR
Filed May 26, 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NOT FOR PUBLICATION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. CR20111597001
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Everesto Harrison Jr., Florence
In Propria Persona

STATE v. HARRISON
Decision of the Court

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 Everesto Harrison Jr. petitions for review of the trial court's denial, after an evidentiary hearing, of his untimely pro se petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review and, for the following reasons, we deny relief.

¶2 After a jury trial, Harrison was convicted of theft of a means of transportation, third-degree burglary, and possession of burglary tools. The trial court found Harrison had two historical prior felony convictions and sentenced him to mitigated, enhanced, concurrent terms of imprisonment, the longest of which is twelve years. This court affirmed Harrison's convictions and sentences on appeal. *State v. Harrison*, No. 2 CA-CR 2012-0499 (memorandum decision filed July 11, 2013).

¶3 In September 2014, Harrison filed an untimely, pro se notice of post-conviction relief in which he alleged, inter alia, that his "failure to file a timely notice of post-conviction relief or notice of appeal was without fault on [his] part," stating his appellate counsel had "never filed or sent the record to [him]." The trial court appointed counsel who subsequently notified the court that he could "not find any legitimate basis for Rule 32 relief." Harrison then filed a pro se petition asserting (1) there was insufficient evidence to support his convictions; (2) the trial court erred in denying a motion in limine and his motion for acquittal; (3) Tucson police officers violated his constitutional rights by failing to conduct fingerprint or DNA analysis of recovered evidence; (4) trial counsel rendered ineffective assistance in failing to advise him adequately regarding plea agreements offered by the state and in failing to prepare a

STATE v. HARRISON
Decision of the Court

defense, to challenge the absence of forensic evidence, or to call an expert witness at trial; (5) appellate counsel rendered ineffective assistance in failing to raise issues, including ineffective assistance of trial counsel, on appeal; and (6) Rule 32 counsel rendered ineffective assistance because he failed to assert an ineffective assistance claim and to protect his constitutional rights.

¶4 The trial court scheduled an evidentiary hearing for the sole purpose of addressing whether trial counsel “failed to properly advise Harrison about the expiration date of [a] plea agreement” discussed “at the *Donald* Hearing on October 26, 2012.” After the evidentiary hearing, the court denied Harrison’s petition in an under-advisement ruling. This pro se petition for review followed.

¶5 On review, Harrison argues the trial court erred in finding counsel had not rendered ineffective assistance during plea negotiations and in denying his remaining claims. He also asserts the court erred in failing to find his second Rule 32 counsel, appointed for the purpose of his evidentiary hearing, “ineffective, unprepared, [and] unorganized.”

¶6 We review a trial court’s post-conviction relief ruling for an abuse of discretion. See *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial); *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (decision after evidentiary hearing). We find none here.

¶7 In this case, the trial court addressed the merits of Harrison’s claims in a detailed, six-page ruling, and Harrison has not met his burden of showing the court abused its discretion in denying relief. We find no fault with the court’s legal analysis, and its findings after the evidentiary hearing were supported by substantial evidence. See *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993) (appellate court will uphold post-conviction ruling if supported by substantial evidence at evidentiary hearing). We add only that most of Harrison’s claims—with the exception of

STATE v. HARRISON
Decision of the Court

his claims of ineffective assistance of trial and appellate counsel—were precluded by his failure to raise the same issues on appeal.¹

¶8 Finally, Harrison contends the performance of counsel at his Rule 32 evidentiary hearing was unprofessional and prejudiced his right to a proper hearing. The trial court’s reference to relevance during his attorney’s line of questioning does not support Harrison’s contention and the entire record refutes the general argument. More important, “[n]on-pleading defendants . . . have no constitutional right to counsel in post-conviction proceedings; thus, despite the existence of state rules providing counsel, a claim that Rule 32 counsel was ineffective is not a cognizable ground for relief in a subsequent Rule 32 proceeding.” *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013).

¶9 Because the trial court clearly identified, addressed, and correctly resolved Harrison’s claims, no purpose would be served by repeating that analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). For the foregoing reasons, as well as those identified in the court’s ruling below, we grant review but deny relief.

¹The trial court may have chosen to address the merits of these claims in light of Harrison’s general claim of ineffective assistance of appellate counsel. We clarify that Harrison’s claims of trial error are precluded, although they may be relevant in the context of appellate counsel’s performance. In any event, we agree with the trial court that Harrison’s petition failed to state a colorable claim of ineffective assistance of appellate counsel. *See, e.g., Bennett*, 213 Ariz. 562, ¶ 22, 146 P.3d at 68 (noting “strong presumption” of appellate counsel’s competence that may be overcome by identifying “issues that are clearly stronger than those selected for appeal”).