

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

VINCENT ALPHONSO POWELL,
Petitioner.

No. 2 CA-CR 2015-0446-PR
Filed May 25, 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NOT FOR PUBLICATION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. CR20071727 and CR20080296
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Vincent A. Powell, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

VÁSQUEZ, Presiding Judge:

¶1 Petitioner Vincent Powell 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). Powell has not sustained his burden of establishing such abuse here.

¶2 After a jury trial in absentia, Powell was convicted in CR 2007-1727 of two counts of armed robbery, one count of aggravated assault, and one count each of first- and third-degree burglary. The trial court imposed concurrent terms of imprisonment, the longest of which was a life term without the possibility of parole for twenty-five years. After a separate trial in CR 2008-0296, Powell was convicted of five counts of armed robbery, one count of attempted armed robbery, six counts of aggravated assault with a deadly weapon or dangerous instrument, and one count of assault. The court imposed twelve concurrent life sentences and one sentence of time served, to run consecutively to those imposed in CR 2007-1727. This court affirmed the convictions and sentences in both causes. *State v. Powell*, No. 2 CA-CR 2010-0139 (memorandum decision filed Mar. 21, 2011); *State v. Powell*, No. 2 CA-CR 2009-0350 (memorandum decision filed Oct. 29, 2010).

¶3 Powell thereafter sought post-conviction relief in both proceedings, and the trial court consolidated them in July 2011. Appointed counsel filed a petition for post-conviction relief arguing Powell had received ineffective assistance of appellate counsel based

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on counsel's failure to raise a claim related to "a flawed medical opinion" in relation to Powell's competency.

¶4 The trial court denied the petition, and Powell subsequently filed a pro se, "supplemental petition," which the court treated as a motion for rehearing and denied. Counsel filed a notice stating she saw no basis for reconsideration or review in the trial court's ruling on her petition. After receiving that notice, the court initially signed an order allowing Powell to file a "*Pro Se* pleading," indicating that Powell's earlier pro se filing had not been intended as a motion for rehearing, but "an attempt to correct shortcomings he believed existed in counsel's filing." In a pro se document filed the day after the court's order, Powell requested a *Torres*¹ hearing and appointment of new counsel to file "a new untainted petition." The court denied the motion for a hearing, allowed counsel to withdraw, and deemed Powell's earlier pro se petition a supplemental petition. It determined Powell had not raised a colorable claim for relief, and denied that petition as well. Powell again requested new counsel, and the court denied the motion.

¶5 When Powell subsequently asked to withdraw counsel's earlier petition, the trial court denied the motion, but allowed Powell "to file his own Rule 32 Petition" and stated it would "liberally construe Powell's [earlier motion] as a subsequent Rule 32 Notice of Post-Conviction Relief." Powell filed an "Amended Petition for Rule 32 Reconsideration," discussing the county jail's administration of lithium and other medications, a doctor's letter relating to his competency, and stating that his trial counsel had made "inappropriate statements" to him and failed to investigate his medical and mental health history. He argued he had received ineffective assistance of trial counsel on that basis and alleged a conspiracy among the state, his doctors, and his attorneys—trial and Rule 32—to convict him. He also raised claims of error by the trial court in relation to the doctor's letter and prosecutorial misconduct. He then filed a "motion to supplement"

¹*State v. Torres*, 208 Ariz. 340, 93 P.3d 1056 (2004).

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the petition “with newly discovered evidence” regarding a “cover-up” of injustice in his case relating to his Rule 32 counsel. Based on its legal analysis and a detailed review of pertinent court records for the period 2008 into 2014, the court summarily denied relief, and that ruling is the subject of Powell’s petition for review.

¶6 On review, to the extent we understand his arguments, Powell raises as issues, inter alia, 1) whether he was “ever legally found competent to stand trial,” 2) whether legal proceedings were valid after he was forced to take lithium, 3) whether he voluntarily absented himself from trial, 4) whether a doctor who provided a report on competency was qualified, 5) whether that doctor was “in an attorney-client relationship with the county attorney,” 6) whether he had received ineffective assistance of trial counsel, 7) prosecutorial misconduct, 8) conflict of first Rule 32 counsel, and 9) whether the trial court abused its discretion in concluding some of these issues were precluded and in denying an evidentiary hearing.

¶7 We agree with the trial court that the majority of these claims are precluded because they were adjudicated or waived on appeal. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). We also agree with the court that Powell has failed to establish a colorable claim of ineffective assistance of trial counsel.² The court correctly and thoroughly addressed Powell’s claims of ineffective assistance, and we therefore adopt its ruling as to those claims. *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

²Because the trial court deemed Powell’s pro se filing a new notice of post-conviction relief, it is arguable that any claim of ineffective assistance of counsel is precluded as well. *See* Ariz. R. Crim. P. 32.2(a). But, because the court ruled on the substance of those claims it is unclear that the court actually intended to initiate a new proceeding rather than to continue the existing proceeding. We therefore likewise treat the petition for review as being taken from a first, timely Rule 32 proceeding.

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ruling in a written decision”). Furthermore, any claim of ineffective assistance of Rule 32 counsel, as the trial court concluded, fails because non-pleading defendants like Powell “have no constitutional right to counsel in post-conviction proceedings.” *State v. Escareno–Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013).

¶8 On review Powell also contends his claims are based on newly discovered evidence. Although he does not clearly specify what evidence, it appears he relies on evidence relating to the jail’s administration of lithium and his mental health diagnosis. He has not, however, presented an argument explaining how this evidence qualifies as newly discovered pursuant to Rule 32.1(e) or how it entitles him to relief under that rule.

¶9 For these reasons, although we grant the petition for review, we deny relief.