IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

WILLIAM LAMONTE BODNEY,
Petitioner.

No. 2 CA-CR 2019-0126-PR
Filed October 16, 2019

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20143819001
The Honorable Greg Sakall, Judge

REVIEW GRANTED; RELIEF DENIED

William LaMonte Bodney, Florence
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Vásquez and Judge Brearcliffe concurred.

S T A R I N G, Presiding Judge:

¶1 William Bodney 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 order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Bodney has not shown such abuse here.

¶2 After a jury trial, Bodney was convicted of attempted robbery, robbery, burglary, weapons misconduct, and two counts each of armed robbery and aggravated assault. The trial court sentenced him to concurrent and consecutive prison terms totaling 25.75 years. We affirmed his convictions and sentences on appeal. *State v. Bodney*, No. 2 CA-CR 2016-0214 (Ariz. App. Apr. 28, 2017) (mem. decision).

¶3 Bodney sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no colorable claims to raise under Rule 32. Bodney then filed a pro se petition asserting that he had been denied "substantial procedural rights" during grand-jury proceedings, that photo lineups leading to his identification were impermissibly suggestive, that there was insufficient evidence to support his convictions, and that several of his charges should have been separately tried.

¶4 The trial court summarily dismissed the petition, noting that Bodney's claims could have been or were raised on appeal or by special action and, thus, were subject to preclusion under Rule 32.2. Because Bodney had previously indicated in his notice that he had received ineffective assistance of counsel, the court conducted an "independent review" of the record and concluded there was no colorable claim of ineffective trial or appellate counsel. This petition for review followed.

¶5 On review, Bodney again asserts there were defects in his grand-jury proceeding and that photo lineups leading to his identification had been unduly suggestive. But, as the trial court correctly determined,

these claims are precluded under Rule 32.2(a)(3) because they could have been raised and reviewed previously.

¶6 Bodney also argues his trial counsel was ineffective in failing to seek special-action relief with regard to his grand-jury claims. He has identified no authority or evidence suggesting that trial counsel falls below prevailing professional norms by declining to seek collateral review of a trial court's discretionary ruling. *See State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006) ("To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant."); *see also Cespedes v. Lee*, 243 Ariz. 46, ¶¶ 3, 5 (2017) (we review denial of remand motion for abuse of discretion).

¶7 Bodney additionally suggests his trial counsel could not have waived his identification claim by failing to raise it on appeal. Although some claims of sufficient constitutional magnitude require a defendant's voluntary, knowing, and intelligent waiver before they are subject to preclusion, *see Stewart v. Smith*, 202 Ariz. 446, ¶ 10 (2002), Bodney has cited no authority suggesting such waiver was required in these circumstances. Thus, we do not address this argument further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim).

¶8 We grant review but deny relief.