NOTICE: NOT FOR PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

VINCENT ANTHONY FLORES, *Petitioner*.

No. 1 CA-CR 13-0132 PRPC
FILED 06-05-2014

Petition for Review from the Superior Court in Maricopa County
No. CR2010-152552-001
The Honorable Kristin Hoffman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Gerald R. Grant
Counsel for Respondent

Vincent Anthony Flores, Tucson
Petitioner Pro Se

MEMORANDUM DECISION

Judge Andrew W. Gould delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Maurice Portley joined.

G O U L D, Judge:

¶1 Petitioner Vincent Anthony Flores petitions this court for review from the dismissal of his petition for post-conviction relief. Presiding Judge Lawrence F. Winthrop and Judges Maurice Portley and Andrew W. Gould have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury convicted Flores of two counts of aggravated assault and one count each of resisting arrest and possession or use of dangerous drugs. The trial court sentenced him to an aggregate term of twenty years' imprisonment and we affirmed his convictions and sentences as modified on direct appeal. *State v. Flores*, 1 CA-CR 11-0373 (Ariz. App. Jan. 24, 2012). Flores filed a pro se petition for post-conviction relief after his counsel found no colorable claims for relief. The trial court summarily dismissed the petition and Flores now seeks review. We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9(c).

¶3 The petition for review properly presents one issue. Flores argues his counsel was ineffective because he failed to interview witnesses or call witnesses to testify at trial. We deny relief. Flores does not identify what witnesses his counsel failed to interview or call to testify, does not identify what information those unidentified witnesses could have provided and does not explain how their testimony would have benefited his defense. He has, therefore, failed to state a colorable claim of ineffective assistance based on the failure to interview witnesses and/or call witnesses to testify at trial.

¶4 While the petition for review presents additional issues, Flores did not raise those issues in the petition for post-conviction relief he filed below and did not seek to amend or supplement his petition. A petition for review may not present issues not first presented to the trial court. *State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991); Ariz. R. Crim. P. 32.9(c)(1)(ii). While Flores did raise some of these new claims in the reply in support of his petition, the trial court did not consider these new issues. A trial court may refuse to consider new issues and arguments first raised in a reply in support of a petition for post-conviction relief. *State v. Lopez*, 223 Ariz. 238, 240, ¶ 7, 221 P.3d 1052, 1054 (App. 2009).

¶5 We grant review and deny relief.

Ruth A. Willingham · Clerk of the Court
FILED: gsh