

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

REY DAVID BARRIGA, *Petitioner*.

No. 1 CA-CR 14-0793 PRPC
FILED 11-1-2016

Petition for Review from the Superior Court in Maricopa County
No. CR 1997-095521
The Honorable Shellie F. Smith, Judge *Pro Tempore*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By E. Catherine Leisch
Counsel for Respondent

Rey David Barriga, Kingman
Petitioner

MEMORANDUM DECISION

Presiding Judge Diane M. Johnsen, Judge Jon W. Thompson and Chief
Judge Michael J. Brown delivered the decision of the court.

PER CURIAM:

STATE v. BARRIGA
Decision of the Court

¶1 Rey David Barriga petitions for review of the summary dismissal of his petition for post-conviction relief.

¶2 The superior court found Barriga violated his probation for attempted sexual conduct with a minor and sentenced him to ten years' imprisonment. In his petition for review, Barriga now argues his counsel was ineffective when he failed to challenge an allegation in the probation violation report that Barriga attended a party at which children were present.¹

¶3 Barriga, however, admitted he violated a probation condition that barred him from associating without permission with persons he knew had criminal records. His petition for post-conviction relief did not address or acknowledge his admission to the probation violation. Moreover, a defendant's self-serving affidavit generally is insufficient to raise a colorable claim. *State v. Wilson*, 179 Ariz. 17, 20 (App. 1993). Barriga offers only his own unsupported assertion that no children were at the party when he arrived. Further, to state a colorable claim for relief, a defendant must allege "facts which, if true, would *probably* have changed the verdict or sentence." *State v. Amaral*, 239 Ariz. 217, 220, ¶ 11 (2016). Having admitted the violation, Barriga cannot show that the court would have sentenced him differently if it had heard evidence no children were at the gathering.

¶4 We do not address the other issues Barriga presents in his petition for review because he did not raise those issues below. Ariz. R. Crim. P. 32.9(c)(1)(ii); see *State v. Ramirez*, 126 Ariz. 464, 467 (App. 1980); *State v. Wagstaff*, 161 Ariz. 66, 71 (App. 1988); *State v. Bortz*, 169 Ariz. 575, 577 (App. 1991).

¶5 For these reasons, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA

¹ This is the only common issue between the petition and reply Barriga filed below and his petition for review.