



STATE OF ARIZONA v. ANTHONY WOOD MAGUIRE

2020 | Cited 0 times | Court of Appeals of Arizona | October 1, 2020

IN THE ARIZONA COURT OF APPEALS DIVISION TWO

THE STATE OF ARIZONA, Respondent,

v.

ANTHONY WOOD MAGUIRE, Petitioner.

No. 2 CA-CR 2020-0154-PR Filed October 1, 2020

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 NOT FOR PUBLICATION See Ariz.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 Maricopa County No. CR2015112642002DT The Honorable Annielaurie Van Wie, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Anthony Wood Maguire, Douglas In Propria Persona MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 summarily dismissing his petition for post-conviction relief filed pursuant

to Rule 32, Ariz. R. Crim. P. 1 We will not disturb that order unless the court abused its discretion. See *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Maguire has not shown such abuse here.

¶2 After a jury trial, Maguire was convicted of first-degree burglary, kidnapping, and four counts of aggravated assault. The trial court sentenced him to concurrent prison terms, the longest of which is twenty-five years. We affirmed his convictions and sentences on appeal. *State v. Maguire*, No. 1 CA-CR 16-0004 (Ariz. App. Jan. 24, 2017) (mem. decision). Maguire then filed a petition for



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post-conviction relief, which the trial court denied. This court denied relief on review. State v. Maguire, No. 1 CA-CR 18-0462 (Ariz. App. Sept. 13, 2018) (mem. decision).

¶3 review was pending, Maguire filed a notice of post-conviction relief raising a claim of newly discovered evidence during their testimony at [his] The trial court appointed counsel,

who filed a notice stating he had reviewed the record but found no -conviction proceeding. Maguire then filed a pro se petition asserting numerous claims, specifically: there was newly discovered evidence of perjury; the prosecutor had committed misconduct by vouching for the 1

Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a Id. le nor works an

State v. Mendoza, 249 Ariz. 180, n.1 (App. 2020). credibility; the reasonable doubt instruction given to the jury had ; his trial, appellate, and previous Rule 32 counsel

had been ineffective; and the judge had committed misconduct at trial and in his previous Rule 32 proceeding.

¶4 It newly discovered evidence and further noted that his claims of ineffective

appellate and Rule 32 counsel were untimely. With regard to newly discovered evidence claim, the court determined that the documents

Maguire had submitted did not establish the witness had been untruthful, that some of the information could have been discovered before trial and, in any event, would have had no value except for impeachment and would not have been material nor changed the verdict. This petition for review followed.

¶5 In his petition for review, Maguire first argues the trial court erred in rejecting his claim of newly discovered evidence under Rule 32.1(e). Relying on a letter from the Maricopa County Superior Court, Maguire asserted the witness had lied about being married to his codefendant. Even assuming evidence Maguire identified would have constituted mere impeachment

evidence and, as such, does not warrant relief under Rule 32.1(e). Rule 32.1(e)(3) excludes impeachment evidence from the definition of newly testimony that was of such critical significance that the impeachment

evidence probably would have changed the judgment or sentenc Maguire has not argued that requirement is met here.



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¶6 Maguire next asserts his claim of prosecutorial vouching is not precluded because it depends on the evidence of alleged perjury. He asserted below that the prosecutor had imp marriage to his codefendant to bolster her credibility. But, even if Maguire

had established the witness committed perjury, there is no evidence the s about do not constitute improper vouching because the prosecutor neither relied on facts not in evidence nor placed the prestige of the state behind the witness. See *State v. Salcido*, 140 Ariz. 342, 344 (App. 1984).

¶7 As to his claims of ineffective assistance of trial and appellate the claims are precluded. Each of these claims could have been raised on appeal or in his first post-conviction proceeding and thus are precluded under Rule 32.2(a)(3) and cannot be raised in this untimely proceeding, see Ariz. R. Crim. P. 32.4(b)(3)(A). 2 For the same reason, t trial are also precluded and untimely. See Ariz. R. Crim. P. 32.2(a)(3), 32.4(b)(3)(A). And, insofar as Maguire asserts the court committed misconduct during his first Rule 32 proceeding, that claim is not cognizable under Rule 32.1 Maguire was instead required to raise any such argument in his petition for review in that proceeding.

¶8 Regarding his claim of ineffective assistance of Rule 32 counsel, Maguire asserts his claim is timely because he filed his notice while his petition for review in his first post-conviction proceeding was pending. But, regardless of when Maguire raised it, the claim is not cognizable under Rule 32 because he is not entitled to the effective assistance of Rule 32 counsel. See *State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4-6 (App. 2013).

¶9 -conviction claims, asserting that the

in its order was improper Even if we agreed the court misstated the standard, as we have explained, s warranted summary rejection under any standard.

¶10 We grant review but deny relief.

2 In his petition below, Maguire identified as a claim that an In the body of his petition, however, he raised that argument as part of his claim of ineffective assistance of trial counsel. Insofar as he intended it as a separate claim, it is precluded and untimely. See Ariz. R. Crim. P. 32.2(a)(3), 32.4(b)(3)(A).

