NOTICE: NOT FOR PUBLICATION.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.

LUIS FLORES ALVAREZ, *Petitioner*.

No. CR 13-0091 PRPC
FILED 05-29-2014

Petition for Review from the Superior Court in Maricopa County
No. CR2009-162012-001DT
The Honorable James T. Blomo, Judge

REVEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Arthur G. Hazelton
Counsel for Respondent

Luis Flores Alvarez, Florence
Petitioner Pro Se

MEMORANDUM DECISION

Presiding Judge John C. Gemmill delivered the decision of the Court, in which Judge Peter B. Swann and Judge Patricia A. Orozco joined.

G E M M I L L, Judge:

¶1 Petitioner Luis Flores Alvarez petitions this court for review from the dismissal of his petition for post-conviction relief. For the following reasons, we grant review and deny relief.

¶2 Alvarez pled no contest to attempted second degree murder and the trial court sentenced him to fifteen years imprisonment. Alvarez filed a pro se petition for post-conviction relief of-right after his counsel found no colorable claims for relief. The trial court summarily dismissed the petition and Alvarez now seeks review. We have jurisdiction in accordance with Arizona Rule of Criminal Procedure 32.9(c).

¶3 The petition for review properly presents two issues. Alvarez argues he was not competent to stand trial or plead guilty. He further argues the trial court violated his right to due process when it sentenced him without the benefit of mitigation evidence that a psychiatrist could have provided following an evaluation prior to sentencing.

¶4 We deny relief. The trial court ordered Alvarez to undergo examinations to determine his competency pursuant to Rule 11 of the Arizona Rules of Criminal Procedure prior to trial. The trial court found Alvarez competent based on the reports of the medical professionals who examined Alvarez. Alvarez offers no evidence the determination of those professionals or the finding of the trial court were incorrect, or that his competency changed afterward.

¶5 Regarding the absence of a presentence psychiatric evaluation, Alvarez's counsel hired a Spanish speaking psychiatrist to examine Alvarez in an effort to obtain and present mitigating evidence for sentencing purposes. That psychiatrist spent several hours with Alvarez over the course of three visits. Alvarez, however, refused to cooperate with the psychiatrist even though his counsel attempted to persuade him to do so. Therefore, Alvarez has failed to present a colorable claim that the trial court denied him due process when it sentenced him without the benefit of a presentence psychiatric evaluation.

¶6 While the petition for review presents additional issues, Alvarez did not raise those issues in the petition for post-conviction relief he filed in superior court. 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).

¶7 For the above reasons, we grant review and deny relief.



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