

Arizona Supreme Court
Miscellaneous Special Action

M-24-0025

SALVADOR HEREDIA v HON. WEIN/STATE

Appellate Case Information

Case Filed: **17-Jun-2024** Archive on: 4-Sep-2034 (planned)
 Case Closed: **4-Sep-2024**

Dept/Composition

Side 1. SALVADOR HEREDIA, Petitioner

(Litigant Group) SALVADOR HEREDIA

- Salvador Heredia PRO SE

Side 2. HON. KEVIN B. WEIN, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, Respondent Judge

(Litigant Group) HON. KEVIN B. WEIN, JUDGE OF THE SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa

- Hon Kevin B Wein, Maricopa County Superior Court

Side 3. STATE OF ARIZONA, Real Party in Interest

(Litigant Group) STATE OF ARIZONA

- State of Arizona

CASE STATUS

Sep 4, 2024.....Case Closed

Sep 4, 2024.....Decision Rendered

| PREDECESSOR CASE(S) | Cause/Charge/Class | Judgment/Sentence | Judge, Role <Comments> | Trial | Dispo |
|---------------------|--------------------|---|--|-------|-------|
| 1 CA | 1 CA-CR 24-0198 | | | | |
| ↻ MAR | CR 1991-005387 | Denial of Defendant's Motion for Reinstatement of Direct Appeal | Kevin B Wein, Authoring Judge of Order Comments: (none) | | |
| ↻ MAR | CR 1992-002731 | Denial of Defendant's Motion for Reinstatement of Direct Appeal | Kevin B Wein, Authoring Judge of Order Comments: (none) | | |
| 1 CA | 1 CA-CR 24-0204 | | | | |
| ↻ MAR | CR 1991-005387 | Denial of Defendant's Motion for Reinstatement of Direct Appeal | Kevin B Wein, Authoring Judge of Order Comments: (none) | | |
| ↻ MAR | CR 1992-002731 | Denial of Defendant's Motion for Reinstatement of Direct Appeal | Kevin B Wein, Authoring Judge of Order Comments: (none) | | |
| 1 CA | 1 CA-CR 24-0206 | | | | |
| ↻ MAR | CR 1994-004124 | | Kevin B Wein, Judge on PC Comments: (none) | | |

CASE DECISION

04-Sep-2024 ORDER

* On June 17, 2024, Petitioner Salvador Heredia filed a "Petition for Special Action." He asserts that "there exists a myriad of errors, that required direct appeal counsel to evaluate and assert, and until this Court either remands this case to the appro

Filed: **04-Sep-2024** Mandate:

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|------------------------------------|
| Decision Disposition |
| Dismissed Without Prejudice |

Robert Brutinel

2 PROCEEDING ENTRIES

1. 17-Jun-2024 FILED: Petition for Special Action (Petitioner Heredia, Pro Se)

Arizona Supreme Court
Miscellaneous Special Action

M-24-0025

SALVADOR HEREDIA v HON. WEIN/STATE

2 PROCEEDING ENTRIES

2. 4-Sep-2024 On June 17, 2024, Petitioner Salvador Heredia filed a "Petition for Special Action." He asserts that "there exists a myriad of errors, that required direct appeal counsel to evaluate and assert, and until this Court either remands this case to the appropriate court for further proceedings, [Petitioner] will continue to be denied both is right to conflict free appellate counsel, and his due process rights of redress, and appeal."

In Maricopa County Superior Court case CR1991-005387, Petitioner entered a plea agreement to attempted possession of narcotic drugs for sale and attempted transportation and/or sale of narcotic drugs. In Maricopa County Superior Court case CR1992-002731, Petitioner entered a plea of no contest to a charge of possession of narcotic drugs. Petitioner's of-right petition for post-conviction relief was dismissed on January 7, 1998.

In Maricopa County Superior Court case CR1994-004124 following a jury trial Petitioner was found guilty on one count of conspiracy to commit first degree murder. On June 25, 1997, the court entered judgment and sentenced Petitioner to a life term of imprisonment consecutive to an eight-year term of imprisonment in CR1991-005387 and concurrent to a six-year term of imprisonment in CR1992-002731. The court of appeals affirmed Petitioner's conviction and sentence on direct appeal, issuing its order and mandate on May 6, 1999. State v. Heredia, 1 CA-CR 97-0533 (App. Oct. 6, 1998) (mem. decision).

Petitioner has filed five petitions for post-conviction relief in CR1994-004124. On August 18, 2000, the superior court dismissed Petitioner's first notice of post-conviction relief after Petitioner failed to file a pro per petition following appointed counsel's filing of a notice of completion of post-conviction review. The court denied Petitioner's motion for rehearing on October 25, 2000. The superior court summarily dismissed subsequent notices of post-conviction relief as untimely on September 1, 2000, and October 4, 2000.

On March 24, 2017, in CR1994-004124, Petitioner filed a notice of post-conviction relief raising claims pursuant to Ariz. R. Crim. P. 32.1(a), (e), and (f). On May 5, 2017, the superior court dismissed the notice, finding that Petitioner failed to adequately explain the reasons for the untimely notice and failed to state a claim for which relief could be granted in an untimely post-conviction relief proceeding.

On March 23, 2022, in CR1994-004124, Petitioner filed a fifth notice of post-conviction relief raising claims pursuant to Rule 32.1(a), (c), (d), (g), and (e). On April 21, 2022, the superior court dismissed the notice finding that Petitioner's claims were untimely or precluded, and not colorable. Notably, Petitioner's Rule 32.1(a) claims included, inter alia, claims that he received ineffective assistance from appellate counsel, his trial counsel rejected a plea offer without consulting him, his double jeopardy and due process rights were violated, the trial court should have dismissed the conspiracy charge at the close of evidence, and he cannot be not guilty of murder but guilty of conspiracy.

The superior court determined that "[w]ith the exception of the ineffective assistance claims, [Petitioner] could have raised all the[] claims on appeal and relief is precluded. See Ariz. R. Crim. P. 32.2(a)(3). Moreover, relief is precluded as to the ineffective assistance claims because [Petitioner] raised such claims in previous Rule 32 proceedings. Ariz. R. Crim. P. 32.2(a)(2)."

Prior to filing the instant matter, Petitioner filed three separate notices of appeal in the court of appeals. In 1 CA-CR 24-0198, 1 CA-CR 24-0204, and 1 CA-CR 24-0206, Petitioner purported to appeal from the superior court's order denying his motion to reinstate his direct appeal in CR1992-002731, CR1991-005387, and CR1994-004124, respectively. The court of appeals dismissed each appeal holding that the superior court's order denying appellant's motion to reinstate his direct appeal is not an appealable order. See A.R.S. § 13-4033.

Here, Petitioner contends that the superior court and court of appeals were obligated to "reinstate" his direct appeal because, argues Petitioner without factual development of the claim, "the trial court . . . appointed the Public Defender's Office as direct appeal counsel[,] [and] [t]his act created an inherent conflict-of-interest that violated [Petitioner's] right-to-appeal with an attorney free from conflicts-of-interest." Petition at 7.

Petitioner's claims must be presented initially to the superior court in a petition for post-conviction relief, and when a final decision is entered, a party may file a timely petition for review in the court of appeals. See Ariz. R. Crim. P. 32.16 and 33.16. After a decision by the court of appeals, Ariz. R. Crim. P. 32.16(l) and 33.16(l) allow for the filing of a timely petition for review in this Court.

Therefore,

THE COURT FINDS that Petitioner has failed to present a basis in fact or law for a cognizable claim that warrants the "reinstatement" of his direct appeal. Petitioner's conviction and sentence were affirmed on May 6, 1999, with the issuance of the order and mandate.

IT IS ORDERED that the Court declines to accept special action jurisdiction and Petitioner's "Petition for Special Action" is dismissed pursuant to Ariz. R.P. Spec. Act. 7(b) without prejudice to Petitioner seeking appropriate relief in the superior court pursuant to Ariz. R. Crim. P. 32 or Ariz. R. Crim. P. 33, as appropriate.

IT IS FURTHER ORDERED closing case number M-24-0025.

IT IS FURTHER ORDERED that no further filings will be accepted in this matter. (Hon. Robert Brutinel)