

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

APR 30 2012

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                               |   |                            |
|-------------------------------|---|----------------------------|
| THE STATE OF ARIZONA,         | ) | 2 CA-CR 2012-0078-PR       |
|                               | ) | DEPARTMENT A               |
| Respondent,                   | ) |                            |
|                               | ) | <u>MEMORANDUM DECISION</u> |
| v.                            | ) | Not for Publication        |
|                               | ) | Rule 111, Rules of         |
| DOMINADOR MEJORADA MALIC III, | ) | the Supreme Court          |
|                               | ) |                            |
| Petitioner.                   | ) |                            |
| _____                         | ) |                            |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009164640001DT

Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney  
By Catherine Leisch

Phoenix  
Attorneys for Respondent

Dominador Mejorada Malic III

Florence  
In Propria Persona

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement in November 2009, petitioner Dominador Malic was convicted of two counts of molestation of a child, class two felonies, both dangerous crimes against children, and child abuse, a class four felony. Pursuant to the

stipulated sentence in the plea agreement, the trial court sentenced Malic in December 2009 to consecutive, slightly aggravated and presumptive prison terms totaling thirty-five years for the molestation counts, followed by lifetime probation for the child abuse count.

¶2 In February 2010, Malic filed a pro se notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and an attorney was appointed to represent him. Unable to find any colorable post-conviction claim to raise, counsel filed a notice of review pursuant to Rule 32.4(c)(2). The court allowed Malic to file a pro se petition, which it dismissed without conducting an evidentiary hearing. This petition for review followed.<sup>1</sup> “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶3 On review, Malic asks that we vacate his sentences and remand for resentencing, arguing his sentences are illegal and the relevant sentencing statutes are unconstitutionally vague. To the extent we understand his arguments, Malic generally asserts that, because his crimes were nondangerous, he was sentenced improperly for “dangerous” crimes against children. Seemingly acknowledging that child molestation is a dangerous crime against children, punishable pursuant to A.R.S. § 13-705, a statute that prescribes enhanced penalties for persons so convicted, Malic nonetheless argues his

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<sup>1</sup>After the trial court notified Malic that his one-sentence document “giv[ing] notice of appeal from the order given by Maricopa County Superior Court . . . dismissing petitioner’s of-right Rule 32 Post-conviction Relief Petition” did not comply substantially with Rule 32.9(c), he filed a “petition for review” that was identical to his petition for post-conviction relief. Because the court apparently treated that document as a petition for review, we will do the same, despite the fact that it utterly fails to comply with Rule 32.9(c).

sentences were illegal. The trial court dismissed Malic's claims, and correctly found them to be without merit. In its ruling, the court stated it had "correctly sentenced the Defendant to offenses that were non-dangerous and non-repetitive, but dangerous crimes against children under A.R.S. § 13-705." The court further found no conflict between the sentencing statutes for dangerous offenses and dangerous crimes against children, A.R.S. §§ 13-704, 13-705, and noted that it had found "specific aggravating factors for the sentence in Count 1."<sup>2</sup> We agree with the court's reasoning.

¶4 In addition, to the extent Malic suggests he did not understand that the offenses to which he was pleading guilty were dangerous crimes against children, the record belies this argument. In both the plea agreement and at the change-of-plea hearing, Malic indicated he understood he was pleading guilty to offenses that are dangerous crimes against children. Moreover, Malic stipulated to the sentences set forth in the plea agreement, the same sentences he received. At the change-of-plea hearing and at sentencing, Malic and his attorney acknowledged their agreement with the stipulated sentences, the very sentences he now challenges. As such, he has waived the opportunity to challenge those sentences now. *See State v. Crocker*, 163 Ariz. 516, 517, 789 P.2d 186, 187 (App. 1990) (entry of guilty plea waives all nonjurisdictional defenses, including challenge to constitutionality of statute). Finally, to the extent Malic claims he was entitled to an attorney, he in fact was provided with an attorney who acted in an advisory capacity during the proceedings in the trial court.

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<sup>2</sup>To the extent Malic seems to argue his sentence for Count One was enhanced improperly, it was not. Instead, the trial court imposed a slightly aggravated sentence on that count.

¶5 We find the trial court did not abuse its discretion by denying post-conviction relief. Therefore, we grant the petition for review, but deny relief.

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge