

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

MAY 15 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0110-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RICHARD ALLEN WEBB,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007174190001DT

Honorable Andrew G. Klein, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Linda Van Brakel

Phoenix
Attorneys for Respondent

James J. Haas, Maricopa County Public Defender
By Tennie B. Martin

Phoenix
Attorneys for Petitioner

E C K E R S T R O M, Presiding Judge.

¶1 Pursuant to a plea agreement, petitioner Richard Webb was convicted of one count of sexual conduct with a minor under the age of fifteen and two counts of attempted sexual conduct with a minor under the age of fifteen, all dangerous crimes

against children. In 2009, the trial court sentenced Webb to a mitigated term of fifteen years' imprisonment on the first count, suspended the imposition of sentence and placed him on lifetime probation on the other counts, and left the payment of restitution "open." Webb subsequently filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In this petition for review, he challenges the court's summary dismissal of his petition for post-conviction relief. "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 abuse here.

¶2 As he did below, Webb claims his guilty plea was not knowing, voluntary, and intelligent because he "was and still is totally unaware of the specific dollar amount of restitution that will be imposed for the victim's ongoing therapy." For his argument, Webb relies on *State v. Phillips*, a case in which our supreme court held that a "defendant must be aware of the specific dollar amounts of restitution that can be imposed before we will find that the defendant voluntarily and intelligently agreed to pay restitution." 152 Ariz. 533, 535, 733 P.2d 1116, 1118 (1987), *limited by State v. Crowder*, 155 Ariz. 477, 480, 747 P.2d 1176, 1179 (1987). Webb argues he could not have understood the consequences of the plea agreement if he was unaware of the amount that could be imposed. In the affidavit attached to his petition below, Webb asserted that although he "agreed [in the plea agreement] to be responsible for the costs of the victim's ongoing therapy" and that at sentencing the amount of restitution was "left open as to all counts," he nonetheless thought he "would be required to pay a specific dollar amount of restitution under the plea agreement." He further attested that "[t]he exact amount of

restitution was a material consideration when [he] entered [his] pleas of guilty,” and that he “was le[d] to believe that restitution would be imposed at sentencing.” He also contends he would not have pled guilty had he understood he “would be exposed to limitless and potentially lifelong payments of restitution.”

¶3 As the trial court noted in its ruling dismissing Webb’s petition for post-conviction relief, any restitution would be determined at a future hearing “where [Webb] would have the right to be present, to object, and present evidence as to what should or should not be paid.” The court also noted that Webb’s “main concerns at the settlement conference and sentencing w[ere] the length of his sentence, the damage he had caused to the victim, and the emotional toll this would take on his family.” The court stated that Webb “addressed the Court at length at sentencing and never evinced any concern over restitution, the amount, when he might know an amount, [or] when he would need to pay it,” and added that Webb “had ample opportunity to [express concerns about restitution], but chose not to, because it simply was not material to his decision to plead guilty.” *See Crowder*, 155 Ariz. at 482, 747 P.2d at 1181 (defendant’s lack of knowledge of approximate amount of restitution does not render plea involuntary unless amount of restitution relevant and material to defendant’s decision to enter into agreement).

¶4 Notably, there simply is no evidence Webb did not understand that the amount of restitution would be left open, or that knowing the amount was relevant and material to his decision to enter into the plea. Nothing in the record other than Webb’s own self-serving statements supports his assertion that he would not have signed the plea

agreement had he known that a specific amount of restitution would not be imposed at sentencing. And, in fact, the record belies his claim.

¶5 At the settlement conference, just a few weeks before the change-of-plea hearing, Webb told the trial court, “[T]he only thing that I really wanted to do was to make amends, to get [the victim] counseling.” He then asked, “Is there any way to get [the victim] help . . . that’s my main concern. . . . [F]rom what I understand she hasn’t had any form of counseling to this point.” After the prosecutor explained that Webb could be asked to repay the Victim’s Compensation Fund for the costs of the victim’s counseling, the court explained, “There will, at the end of the case, be some sort of order that restitution will be left open, and if the State decides down the road to pursue restitution against you, an order can be issued that you ultimately pay for the cost of counseling.”

¶6 Similarly, at the change-of-plea hearing, Webb acknowledged he had read the plea agreement, discussed it with his attorney, and understood its contents. Webb evidenced his understanding by placing his initials next to each paragraph in the agreement, including the paragraph stating he “will be responsible for the costs of the victim’s ongoing therapy.” The trial court asked Webb, “Do you understand if the victim comes forward and can demonstrate an out of pocket financial loss you could be responsible for paying the costs of restitution as well?” Webb responded, “Yes, sir. I understand.” Finally, at the January 2009 sentencing hearing, Webb did not address the issue of restitution or raise any objection to paying it. Instead, he again stated, “I hope

and pray that [the victim] seeks the counseling and/or treatment so she's able to get on with her life and put this behind her.”

¶7 There is overwhelming evidence in the record to support the trial court's dismissal of Webb's petition. Viewing the record in its entirety, the fact restitution was left open and unspecified in this case does not establish that Webb's guilty plea was not knowing, voluntary, and intelligent.

¶8 Because we find the trial court did not abuse its discretion by dismissing Webb's petition for post-conviction relief, we grant the petition for review, but deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge