

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

OCT 19 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0263-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ANDY CHARLES BODIE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200500661

Honorable Robert C. Brown, Judge Pro Tempore
Honorable Delia Neal, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Andy Charles Bodie

Florence
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Andy Bodie seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "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). Bodie has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Bodie was convicted of two counts of attempted child molestation in 2006. The trial court sentenced him to an enhanced, mitigated five-year term of imprisonment on one count and placed him on a lifetime term of probation on the other. In April 2009, Bodie filed an “application for the writ of habeas corpus,” which the trial court treated as a Rule 32 notice of post-conviction relief. Appointed counsel filed a petition for post-conviction relief, arguing Bodie was entitled to resentencing pursuant to *State v. Gonzales*, 216 Ariz. 11, 162 P.3d 650 (App. 2007). In January 2010, the court denied relief, and Bodie apparently did not seek review.

¶3 In August 2010, after Bodie had been released from prison, the state petitioned to revoke Bodie’s probation based on numerous alleged violations of the conditions of his probation. Bodie admitted having gone to a park in violation of “his special conditions of probation for sex offenders,” and the trial court revoked his probation, sentencing him to a “slightly mitigated,” enhanced prison term of eight years.

¶4 Bodie subsequently initiated a post-conviction relief proceeding, and appointed counsel filed a notice stating she had “reviewed the transcript and trial file and c[ould] find no colorable claims pursuant to Rule 32.” In his pro se petition, Bodie argued the court had violated A.R.S. § 13-116 by imposing the eight-year sentence and it lacked authority to impose the sentence as a consequence of his having violated the terms of his probation. Concluding Bodie’s position was “spurious” because the “indictment alleges two separate and distinct acts,” the court denied relief.

¶5 On review, Bodie essentially argues the trial court ignored his argument that it lacked authority to impose the eight-year sentence and erred in denying his

motions to expand the record to include certain documents and transcripts relating to his original plea agreement and sentencing. Bodie mentions double jeopardy and “disparate or single criminal acts” in his petition for review, but he does not adequately develop an argument that the court’s conclusion that his sentence did not violate § 13-116 was an abuse of discretion, and any such argument is therefore waived. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain “[t]he reasons why the petition should be granted” and “specific references to the record”); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995).

¶6 Although the trial court did not specifically address Bodie’s rather confusing argument about its lack of authority to impose an eight-year sentence after he violated the conditions of his probation, we find no abuse of discretion. *Cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court will affirm trial court’s ruling if result legally correct for any reason). Section 13-901(C), A.R.S., provides that if “the defendant commits an additional offense or violates a condition,” the court “may revoke probation in accordance with the rules of criminal procedure at any time before the expiration or termination of the period of probation.” And, “when probation is revoked,” “[a] term of imprisonment authorized” under the sentencing statutes may be imposed. A.R.S. § 13-603(E). Thus, the court was authorized to impose any sentence provided by law for a class three, dangerous crime against children, including the eight-year sentence it imposed. *See* A.R.S. §§ 13-705, 13-1001, 13-1410.

¶7 Furthermore, in signing the form outlining his conditions of probation, Bodie acknowledged that if he violated those conditions his probation could be revoked

and the court could “impose sentence upon [him] in accordance with the law.” To the extent he now argues he was not adequately advised at his original sentencing that violating his probation could result in the imposition of a prison term or argues his sentence was unlawful, we agree with the trial court that any such claim is precluded. *See* Ariz. R. Crim. P. 32.2(a)(3). For that reason, we also cannot say the court abused its discretion in denying Bodie’s various motions for transcripts and documents relating to the earlier proceedings. Therefore, although we grant the petition for review, relief is denied.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge