

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

NOV 27 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0266-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JAMES ADAM MEDINA,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20103003001

Honorable Terry L. Chandler, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

James A. Medina

Florence
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 James Medina petitions this court for review of the trial court's order, entered after an evidentiary hearing, denying his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless

the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Medina has not met his burden of establishing such abuse here.

¶2 According to the plea agreement and sentencing minute entry, Medina pled guilty to two counts of “sexual conduct with a minor in the second degree, a class three felony” and “preparatory dangerous crime against children” and was sentenced to consecutive, ten-year prison terms for each offense. Medina then filed a notice of post-conviction relief, and appointed counsel filed a petition arguing trial counsel had been ineffective in failing to provide Medina with disclosure relevant to his defense and in failing to adequately investigate the charges against him. Specifically, Medina asserted counsel had not discussed with him a police report in which the victim stated she had sexual relations with three men near the time of his offenses and maintained he would not have pled guilty had he known of the report. He further claimed an investigator had contacted two of the three men, and they denied having relations with the victim. Medina also asserted his counsel had been ineffective in failing to file a motion to withdraw from the plea agreement and argued that, because he lacked “full information about his case,” he should be permitted to withdraw from the plea.

¶3 After an evidentiary hearing, the trial court denied relief. The court found credible trial counsel’s testimony that he had discussed with Medina the victim’s allegations regarding the other men and the possible implications of those allegations at trial, as well as counsel’s statement he had not investigated those allegations further because Medina had decided to plead guilty. The court further determined that, in light

of that finding, there would have been no basis for counsel to move for Medina's withdrawal from the plea agreement.

¶4 To prevail on a claim of ineffective assistance of counsel, Medina must demonstrate, by a preponderance of the evidence, *see* Ariz. R. Crim. P. 32.8(c), that counsel's conduct fell below prevailing professional norms and that counsel's deficient performance prejudiced him. *See Strickland v. Washington*, 466 U.S. 668, 687, 688 (1984). In these circumstances, Medina must show that his counsel failed to provide him information necessary to evaluate the state's plea offer and that he would have rejected the plea had he received adequate advice from counsel. *See State v. Donald*, 198 Ariz. 406, ¶¶ 16, 20, 10 P.3d 1193, 1200, 1201 (App. 2000).

¶5 When, as here, the trial court has held an evidentiary hearing, we defer to the court's factual findings unless they are clearly erroneous. *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). In our review, we "view the facts in the light most favorable to sustaining the lower court's ruling, and we must resolve all reasonable inferences against the defendant." *Id.* And we will affirm if "the trial court's ruling is based on substantial evidence." *Id.* "Evidence is not insubstantial merely because testimony is conflicting or reasonable persons may draw different conclusions from the evidence." *Id.*

¶6 Medina's arguments on review are difficult to parse. He first complains that his trial counsel had a "conflict of interest" because he did not "assist" Medina in his efforts to withdraw from his plea. But, to the extent Medina intends this as an argument separate from his claim that counsel had been ineffective in not filing a motion to

withdraw, he did not raise this claim in his petition below, and we therefore will not address it on review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider for first time on review issues not presented to trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review). For the same reason, we do not address his arguments that counsel “failed to challenge the testimony” presented to the grand jury, that his sentencing should not have proceeded because the Public Defender’s office had assigned new counsel for his sentencing at his request, or that sentencing counsel had been ineffective. *See Ramirez*, 126 Ariz. at 468, 616 P.2d at 928; *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii).

¶7 Medina also asserts the trial court erred in concluding trial counsel had, in fact, discussed with him the victim’s allegations she had sexual relations with other men and had permitted him to review all of the state’s disclosure. These arguments, at their core, ask us to reweigh the evidence on review. We will not do so. *See Sasak*, 178 Ariz. at 186, 871 P.2d at 733. As we noted above, it was for the trial court to make any credibility determinations and resolve any inconsistencies between Medina’s and counsel’s testimony.¹ *Id.*; *see also State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding).

¹Medina also filed in this court a supplement to his petition for review claiming that the transcript of his Rule 32 evidentiary hearing is missing portions of his testimony. Medina identifies no missing testimony, however, that would affect the trial court’s credibility determination or our review of that determination. And, in any event, a claim the transcript contains errors is brought properly in the trial court, Ariz. R. Crim. P. 31.8(h), and we therefore do not address it further.

We have reviewed the record and conclude the court correctly resolved Medina’s claims “in a fashion that will allow any court in the future to understand the resolution.” *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We therefore adopt its ruling, and, although we grant the petition for review, we 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*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.