

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MARDELL LACY,
Petitioner.

No. 2 CA-CR 2016-0067-PR
Filed April 7, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2012126307001DT
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

Mardell Lacy, Florence
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Mardell Lacy seeks review of the trial court's ruling summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Lacy has not met his burden of demonstrating such abuse here.

¶2 Lacy pled guilty to kidnapping and two counts of attempted sexual assault. The trial court sentenced him to a seven-year prison term for the kidnapping, to be followed by lifetime probation terms for the attempted sexual assaults. Lacy sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claims to raise pursuant to Rule 32.

¶3 Lacy filed a pro se petition arguing: (1) his speedy-trial rights were violated because his trial counsel disregarded his "expressed demand for a speedy trial" by requesting trial be continued, (2) the plea agreement was invalid because he accepted the agreement beyond its expiration date, (3) his trial counsel was ineffective for failing to adequately investigate his case for trial, and (4) the prosecutor withheld exculpatory evidence. The trial court summarily denied relief as well as Lacy's subsequent motion for reconsideration. This petition for review followed.

¶4 On review, Lacy repeats the arguments he made below. By pleading guilty, however, Lacy has waived all nonjurisdictional defects unrelated to the validity of his plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Thus, we need not

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further address his claims that his speedy-trial rights were violated, that the prosecutor committed misconduct, or that his trial counsel did not conduct a sufficient investigation.¹

¶5 Lacy's remaining argument, however, does address the validity of his plea. He observes that his signed plea agreement states that it "expires and is revoked if not entered in court by August 16, 2012" and that he did not plead guilty until November 2012. Thus, he concludes, his plea is invalid because he accepted it after the expiration date.

¶6 The deadline was included in the plea agreement by the prosecutor. "The decision to terminate plea bargaining lies with the prosecutor's office." *State v. Darelli*, 205 Ariz. 458, ¶ 18, 72 P.3d 1277, 1281 (App. 2003). Thus, the state necessarily has authority to continue to negotiate by extending the time in which an offer can be accepted. And Lacy has not cited, nor have we found, any authority suggesting that a plea agreement is invalid merely because the written agreement contains an expiration date the state has declined to enforce. Thus, he has waived this argument on review and we do not address it further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).

¶7 We grant review but deny relief.

¹Lacy also attempts to incorporate by reference arguments made in his petition for post-conviction relief, reply to the state's response, and motion for reconsideration. That procedure is not permitted by our rules. *See State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991). And, because he did not raise the issue in his petition below, we do not address Lacy's claim that the plea agreement and sentencing minute entry improperly listed his convictions for attempted sexual assault as class two felonies. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).