IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MARK ALLEN CORMIER,
Petitioner.

No. 2 CA-CR 2016-0219-PR
Filed September 8, 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NOT FOR PUBLICATION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 Pima County
Nos. CR20133685001 and CR20141556001 (Consolidated)
The Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Offices of Erin E. Duffy, P.L.L.C., Tucson
By Erin E. Duffy
Counsel for Petitioner

MEMORANDUM DECISION

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

S T A R I N G, Judge:

¶1 Mark Cormier 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 that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Cormier has not met his burden of demonstrating such abuse here.

¶2 Cormier pled guilty to two counts of second-degree burglary. The trial court sentenced him to concurrent, maximum, twenty-year prison terms. At sentencing, the trial court initially stated it would sentence Cormier to presumptive, 11.25-year prison terms for each offense, to be served consecutively. The parties, however, advised the court that the plea agreement called for concurrent sentences. The court then stated it would not "impose the presumptive term" and would instead impose a twenty-year term for each offense, finding as aggravating factors "both [Cormier's] criminal history and impact on the victim."

¶3 Cormier sought post-conviction relief, arguing the court had violated his due process right and "impose[d] an illegal sentence" when it "reweighed and reclassified the aggravating and mitigating factors to justify" the maximum sentences after previously finding "those same factors justified a presumptive sentence." The trial court summarily denied relief, and this petition for review followed.

¶4 Cormier repeats his claim on review. He cites no authority, and we find none, however, suggesting a trial court is bound by its earlier evaluation of aggravating and mitigating factors

and is thus prohibited from imposing the maximum prison terms in these circumstances. A court is permitted to "correct the original oral pronouncement of sentence to conform to its intent." *State v. Wedding*, 171 Ariz. 399, 408, 831 P.2d 398, 407 (App. 1992). Cormier is correct that the trial court in *Wedding* did not alter the length of the sentence, only whether the sentences would run consecutively or concurrently. *Id.* But we are not required to pretend the sentencing court did not consider the aggregate sentence in evaluating the individual sentences for each offense. *See State v. Fillmore*, 187 Ariz. 174, 184, 927 P.2d 1303, 1313 (App. 1996) ("[A] trial court must choose, among concurrent and consecutive sentences, whichever mix best fits a defendant's crimes."). It is entirely appropriate for a court to reconsider whether it should impose the same sentence for individual offenses upon learning consecutive sentences are not available. *See State v. Viramontes*, 163 Ariz. 334, 340, 788 P.2d 67, 73 (1990) (remanding when supreme court could not determine if trial court would have imposed same sentence had it known consecutive sentences not available). The trial court did not err in summarily rejecting this claim.

¶5 We grant review but deny relief.