

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

SEP 14 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0141-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JON ROLLAN MARTIN,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200600464

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Jon R. Martin

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner Jon Martin was convicted pursuant to a plea agreement of two counts of sexual conduct with a minor, one of which was a repetitive offense based on one prior felony conviction. He was sentenced to a stipulated, aggravated and enhanced prison term of fifteen years, to be served consecutively to the term imposed in another cause, followed by a lifetime term of probation on the second count. Martin sought post-

conviction relief pursuant to Rule 32, Ariz. R. Crim. P., and the trial court denied the petition without an evidentiary hearing. This pro se petition for review followed. Absent a clear abuse of discretion, we will not disturb the trial court's ruling. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 In his Rule 32 petition, Martin alleged his trial counsel had been ineffective because he had failed to file a motion to withdraw the plea agreement. Martin had entered the plea at a change-of-plea hearing on January 7, 2009, after extensive negotiations. The trial court accepted the plea at that time. On February 5, at the scheduled sentencing hearing, trial counsel informed the court that Martin wished to withdraw the plea. The court continued the sentencing hearing until March 5. On that date, counsel advised the court he intended to file a motion to withdraw from the plea agreement; the court granted counsel's request for additional time, resetting the sentencing hearing for April 2. On April 16, the court denied counsel's request for additional time to file a motion to withdraw the plea, and proceeded with sentencing.

¶3 In his petition for post-conviction relief, Martin maintained that trial counsel was ineffective for failing to file the motion to withdraw from the plea agreement and attempting to establish a "manifest injustice." *See* Ariz. R. Crim. P. 17.5 (providing trial court discretion to permit defendant to withdraw from plea "when necessary to correct a manifest injustice"). He also contended counsel had failed to object during the change-of-plea hearing that certain procedures were inconsistent with Rule 17.2, Ariz. R. Crim. P. He argued the trial court had failed to advise him of each and every item listed in Rule 17.2 and ascertain his understanding of each one.

¶4 In a thorough minute entry, the trial court identified and clearly resolved these claims, finding that, even if deficient, counsel’s performance had not been prejudicial because there was no basis to permit Martin to withdraw from the plea. *See Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984) (to establish claim of ineffective assistance of counsel, defendant must show counsel’s performance deficient and prejudicial, meaning there is “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different”). The court rejected Martin’s assertions about the inadequacies of the change-of-plea process and proceeding, finding it had complied sufficiently with the requirements of the rule. And the court noted Martin’s extensive knowledge about the nature of a plea proceeding based on this and another criminal cause, his personal involvement in the plea negotiations, and his familiarity with the plea agreement itself. We therefore conclude no purpose would be served by rehashing the minute here in its entirety. Because the record and the applicable law support the court’s ruling, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[’s] rehashing the trial court’s correct ruling in a written decision”).

¶5 On review, Martin reurges these claims but does not sustain his burden of establishing the trial court abused its discretion. In addition, he raises claims relating to the sentence and the plea agreement that he did not raise in his petition for post-conviction relief. We will not address any such claims for the first time on review. To

obtain review of a claim a defendant must first present it to the trial court for its consideration. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider issues raised for first time on review); *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 . . . which the defendant wishes to present” for review).

¶6 Although we grant Martin’s petition for review, for the foregoing reasons, relief is denied.

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

CONCURRING:

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

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