

NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Respondent*,

*v.*

MICHAEL JAIMON SMILEY, *Petitioner*.

No. 1 CA-CR 16-0012 PRPC  
FILED 7-27-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2014-134239-001  
The Honorable Teresa Sanders, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By David R. Cole  
*Counsel for Respondent*

Michael Jaimon Smiley, Florence  
*Petitioner*

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**MEMORANDUM DECISION**

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

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**T H O M P S O N**, Judge:

¶1 Petitioner Michael Jaimon Smiley petitions this court for review from the summary dismissal of his petition for post-conviction relief of-right. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 Smiley pled guilty to conspiracy to commit possession of dangerous drugs for sale and the superior court sentenced him to a stipulated term of 9.25 years' imprisonment. In his petition for review, Smiley argues his trial counsel was ineffective when he (1) failed to explain Arizona Revised Statute (A.R.S.) section 13-712 to Smiley; (2) failed to request a mitigation hearing; (3) failed to obtain mitigation witnesses; (4) failed to investigate witnesses who could have proven Smiley's innocence; and (5) failed to review the presentence report with Smiley. Smiley further argues that counsel appointed to represent him in this post-conviction relief proceeding was ineffective when he filed a notice that he could find no colorable claims for relief rather than raise the above issues. Finally, Smiley argues the superior court erred when it failed to ask Smiley if he had reviewed the presentence report with his counsel.

¶3 We deny relief because Smiley did not raise any of these specific issues in the petition he filed below. A petition for review may not present issues not first presented to the trial court. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *State v. Wagstaff*, 161 Ariz. 66, 71, 775 P.2d 1130, 1135 (App. 1988); *State v. Bortz*, 169 Ariz. 575, 577-78, 821 P.2d 236, 238-39 (App. 1991); Ariz. R. Crim. P. 32.9(c)(1)(ii). See also *State v. Swoopes*, 216 Ariz. 390, 403, ¶¶ 40-41, 166 P.3d 945, 958 (App. 2007); *State v. Smith*, 184 Ariz. 456, 459, 910 P.2d 1, 4 (1996) (both holding there is no

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review for fundamental error in a post-conviction relief proceeding).

¶4 We grant review but deny relief.



AMY M. WOOD • Clerk of the Court  
FILED: AA