

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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.*

JESUS ANDRADE BARRON, *Petitioner*.

No. 1 CA-CR 16-0028 PRPC  
FILED 9-12-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2013-00370-001  
The Honorable Cynthia Bailey, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Robert E. Prather  
*Counsel for Respondent*

Jesus Andrade Barron, Buckeye  
*Petitioner*

**MEMORANDUM DECISION**

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Chief Judge Samuel A. Thumma joined.

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**JONES**, Judge:

¶1 Jesus Barron petitions for review from the dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32. We have considered the petition for review and, for the reasons stated, grant review but deny relief.

¶2 Barron pleaded guilty to: aggravated assault (Count 1); armed robbery (Count 2); threatening or intimidating (Count 3); attempted influencing a witness (Count 4); participating in a criminal street gang (Count 5); and assisting a criminal street gang (Count 6), following events occurring in February and November 2012. He also admitted he was on parole at the time of the aggravated assault and armed robbery offenses, had two prior felony convictions, and committed the offenses contained within Counts 3 through 6 to promote, further, or assist criminal conduct by a criminal street gang. The trial court sentenced Barron to concurrent prison terms for Counts 1 and 2 to be followed by concurrent terms for Counts 3 through 6. Based upon Barron's admission to the gang allegation, and pursuant to Arizona Revised Statutes (A.R.S.) section 13-714,<sup>1</sup> the court enhanced the sentences in Counts 3 through 6 by either three or five years depending on the class of the offense.<sup>2</sup>

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<sup>1</sup> Absent material changes from the relevant date, we cite a statute's current version.

<sup>2</sup> For persons "convicted of committing any felony offense with the intent to promote, further or assist any criminal conduct by a criminal street gang[,] . . . [t]he presumptive, minimum and maximum sentence for the offense shall be increased by three years if the offense is a class 4, 5 or 6 felony or shall be increased by five years if the offense is a class 2 or 3 felony." A.R.S. § 13-714.

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¶3 Barron timely sought Rule 32 relief. Appointed counsel reviewed the record and other items but was unable to discern any claims for relief. Thereafter, Barron filed a petition for post-conviction relief *in propria persona*, arguing his enhanced sentences for Counts 5 and 6 violated the constitutional prohibition against double jeopardy.<sup>3</sup> The trial court summarily dismissed the Rule 32 proceeding, and this timely petition for review followed.

¶4 Barron argues the trial court fundamentally erred in relying upon A.R.S. § 13-714 to enhance his sentences on Counts 5 and 6. Barron contends the statute and the offenses comprising those counts share “identical elements” resulting in “two distinct punishments for a single offense in violation of the Double Jeopardy Clause.” “We review for abuse of discretion the superior court’s denial of post-conviction relief based on lack of a colorable claim.” *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006) (citing *State v. Krum*, 183 Ariz. 288, 293 (1995)).

¶5 Barron has not shown an abuse of discretion. First, there is no fundamental error review in a post-conviction relief proceeding. *State v. Smith*, 184 Ariz. 456, 460 (1996). Second, by pleading guilty to the offenses, Barron waived his challenge to the sentences imposed. *See State v. Flores*, 218 Ariz. 407, 409-10, ¶ 6 (App. 2008) (“A plea agreement waives all non-jurisdictional defects . . . includ[ing] deprivations of constitutional rights.”) (citations omitted); *see also State v. Bryant*, 219 Ariz. 514, 517-18, ¶¶ 14-17 (App. 2008) (concluding imposition of an illegal sentence is not an error related to a lack of subject matter jurisdiction). Indeed, Barron acknowledges here that “there is no doubt [he] entered a guilty plea and assured the court he agreed to the terms and the sentence enhancer.” Finally, regarding the merits:

[B]oth the U.S. and Arizona Supreme Courts have held that a sentence enhancement does not offend double jeopardy . . . [because] [t]he increase in punishment results from the manner in which the crime was committed; it is not additional punishment for a previous crime of which the defendant was not convicted.

*State v. Harm*, 236 Ariz. 402, 408, ¶ 23 (App. 2015) (citing *United States v. Watts*, 519 U.S. 148, 154-55 (1997), and *State v. Bly*, 127 Ariz. 370, 373 (1980)).

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<sup>3</sup> Although the petition mentioned the convictions on Counts 3 through 6, Barron limited his substantive argument to Counts 5 and 6.

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¶6 Although the petition for review presents additional issues, Barron did not raise those issues in the petition for post-conviction relief. A petition for review may not present issues not first presented to the trial court. See *State v. Vera*, 235 Ariz. 571, 573-74, ¶ 8 (App. 2014) (citing *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980), and then Ariz. R. Crim. P. 32.9(c)(1)(ii)).

¶7 Because Barron fails to establish an abuse of discretion, we grant review but deny relief.



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