

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

STATE OF ARIZONA, *Respondent*,

v.

JACOB AARON GALBREATH, *Petitioner*.

No. 1 CA-CR 16-0120 PRPC
FILED 9-14-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2006-143722-001
The Honorable Justin Beresky, Judge *Pro Tempore*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Lisa Marie Martin
Counsel for Respondent

Jacob Aaron Galbreath, Phoenix
Petitioner

STATE v. GALBREATH
Decision of the Court

MEMORANDUM DECISION

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

T H U M M A, Chief Judge:

¶1 Petitioner Jacob Aaron Galbreath seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).¹ Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Because Galbreath has shown no such error, this court grants review but denies relief.

¶2 In March 2007, Galbreath pled guilty to aggravated assault, a Class 3 non-dangerous, non-repetitive felony and a domestic violence offense, committed in October 2004. The court suspended sentence and placed Galbreath on intensive probation for four-years to start upon absolute release from prison in a separate matter. When released from prison in 2013, Galbreath failed to report to the probation department, a petition to revoke probation was filed, he admitted to violating probation and in January 2015, the court reinstated intensive probation. Galbreath's reinstated intensive probation was for four years, with a January 11, 2019 expiration date, and started with four months of jail time, to be screened for work furlough.

¶3 While in jail and on work furlough, Galbreath failed to return to jail on February 11, 2015. Another petition to revoke was filed and, in late February 2015, Galbreath admitted to that probation violation. At the disposition that immediately followed his admission, Galbreath urged reinstatement on probation, claiming a "momentary mental breakdown." The court, however, revoked probation and imposed a presumptive 3.5-year prison term with 219 days presentence incarceration credit.

¹ Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

STATE v. GALBREATH
Decision of the Court

¶4 Galbreath filed a timely notice of post-conviction relief seeking to challenge the February 2015 probation revocation and resulting sentence. After reviewing the record, including information from Galbreath and trial counsel's case log and correspondence, Rule 32 appointed counsel filed a notice of completion, stating she was unable to find any claims warranting post-conviction relief.

¶5 Galbreath filed a pro se petition for post-conviction relief claiming: (1) the introduction at trial of a coerced confession; (2) newly discovered evidence that his "mental health was not taken into consideration" at sentencing; and (3) he did not know he was on probation when he was released in 2013. After the State responded, Galbreath's reply also sought to raise ineffective assistance of counsel and double jeopardy (framed as a newly discovered evidence claim). After the superior court summarily dismissed his petition, Galbreath timely filed a petition for review with this court.

¶6 Galbreath's petition for review fails to cite to the record to support the factual assertions. Ariz. R. Crim. P. 32.9(c)(1) ("petition for review shall contain specific references to the record"). And although citing authorities to support general matters of law, the petition for review fails to explain how those authorities could support relief by this court. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (requiring petition for review to state "issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review"); Ariz. R. Crim. P. 32.9(c)(1)(iv) (requiring petition for review to state "reasons why the petition should be granted"). To be eligible for post-conviction relief, a petition must strictly comply with Rule 32. *Canion v. Cole*, 210 Ariz. 598, 600 ¶ 11 (2005). In the absence of any developed argument that conforms with Rule 32, this court will deny relief. *See State v. Stefanovich*, 232 Ariz. 154, 158 ¶ 16 (App. 2013) (concluding insufficient argument waives claim on review). For these reasons, the petition for review shows no basis for relief.

STATE v. GALBREATH
Decision of the Court

¶7 In addition, to the extent the petition for review reasserts claims first presented to the superior court in Galbreath's Rule 32 reply, those claims are not properly preserved and will not be addressed. *State v. Lopez*, 223 Ariz. 238, 240 ¶ 7 (App. 2009) (finding superior court does not err by refusing to consider new issues and arguments first raised in a reply in support of a petition for post-conviction relief). The fact that the superior court briefly addressed the meritless nature of such claims is of no consequence; this Court may affirm on any basis supported by the record. *State v. Robinson*, 153 Ariz. 191, 199 (1987). Moreover, and in any event, Galbreath's statements at the revocation hearing are contrary to his assertion that his plea was involuntary.

¶8 For these reasons, this court grants review but denies relief.



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