

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DOMINIQUE PHILLIP VALLES, *Petitioner*.

No. 1 CA-CR 16-0773 PRPC
FILED 9-14-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2014-148045-001
The Honorable Dean M. Fink, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Dominique Phillip Valles, Buckeye
Petitioner

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MEMORANDUM DECISION

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

M c M U R D I E, Judge:

¶1 Dominique Phillip Valles 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 but deny relief.

¶2 Valles pled guilty to aggravated assault and misconduct involving weapons. The superior court sentenced him to ten years' imprisonment for aggravated assault and placed him on probation for misconduct involving weapons, all as stipulated in the plea agreement. Valles filed a *pro se* petition for post-conviction relief of-right after his counsel found no colorable claims for relief. The superior court summarily dismissed the petition and Valles now seeks review.

¶3 Valles properly presents one issue for review. He argues his plea was not voluntary because his counsel coerced him into accepting the plea. We deny relief because the record demonstrates Valles's plea was voluntary. At the settlement conference, Valles attempted to persuade the State to stipulate to a sentence of nine years' imprisonment for aggravated assault. When Valles eventually accepted the State's offer of ten years, the court told Valles it did not want him to rush, and told him to make sure all his questions were answered first and that he was "comfortable." Further, when the court informed Valles that the decision of whether to accept the offer was his alone, Valles responded, "Absolutely."

¶4 At the change of plea hearing later that same day, Valles told the court he wished to proceed with his guilty plea. He also told the court nobody had forced or threatened him in any way to accept the plea and that he pled guilty voluntarily and on his own. Valles also agreed with the factual basis offered to support both counts. Finally, when the court informed Valles that it found he entered his plea knowingly, intelligently and voluntarily; that there was a factual basis to support each count; and that the court would accept the plea, Valles responded, "Thank you, sir." Thus, the superior court did not abuse its discretion by rejecting Valles's

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assertion that counsel improperly coerced him into accepting the plea agreement.

¶5 While the petition for review presents additional issues, Valles did not raise those issues in the petition for post-conviction relief he filed below.¹ A petition for review may not present issues not first presented to the trial court. Ariz. R. Crim. P. 32.9(c)(1)(ii); *State v. Bortz*, 169 Ariz. 575, 577-78 (App. 1991); *State v. Wagstaff*, 161 Ariz. 66, 71 (App. 1988); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980); see *State v. Smith*, 184 Ariz. 456, 459 (1996); *State v. Swoopes*, 216 Ariz. 390, 403, ¶ 41 (App. 2007) (both holding there is no review for fundamental error in a post-conviction relief proceeding).

¶6 We grant review but deny relief.



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

¹ Valles argued in his petition below that the allegations against him were untrue, claiming the victim kept changing his story and there were errors in his presentence report, but he did not present those claims in the context of ineffective assistance of counsel.