

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

KRISTOPHER IVON DILLON, *Petitioner*.

No. 1 CA-CR 17-0760 PRPC  
FILED 4-24-2018

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Petition for Review from the Superior Court in Maricopa County  
No. CR2015-144024-001  
The Honorable Justin Beresky, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Gerald R. Grant  
*Counsel for Respondent*

Kristopher Ivon Dillon, Florence  
*Petitioner*

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**MEMORANDUM DECISION**

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jennifer B. Campbell joined.

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**M c M U R D I E**, Judge:

¶1 Petitioner Kristopher Ivon Dillon petitions this court for review from the dismissal of his petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review but deny relief.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 Dillon pled guilty to molestation of a child, a Class 2 felony and dangerous crime against children, and two counts of attempted molestation of a child, Class 3 felonies and dangerous crimes against children. He was sentenced to an aggravated term of 24 years' imprisonment on the molestation charge and placed on lifetime probation on the remaining counts.

¶3 After Rule 32 counsel filed a notice of completion, Dillon, proceeding *pro se*, filed a timely "of-right" petition for post-conviction relief claiming ineffective assistance of counsel, his plea was involuntary, newly discovered material facts, a violation of due process, and a lack of jurisdiction. The superior court summarily dismissed his petition.

**DISCUSSION**

¶4 In his petition for review, and reply, we note that Dillon raises legal issues and presents facts not presented to the superior court. A reviewing court will not consider issues not first presented to the superior court. *State v. Wagstaff*, 161 Ariz. 66, 71 (App. 1988). Additionally, Dillon raised sentencing issues in his reply in the superior court, without seeking permission from the superior court to amend his petition. *See* Ariz. R. Crim. P. 32.6(c) (permitting the court to allow amendments to a post-conviction relief petition for good cause). This court will not consider arguments or issues first raised in a reply. *See State v. Watson*, 198 Ariz. 48, 51, ¶ 4 (App. 2000).

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¶5 We review the decision of the superior court for an abuse of discretion. *State v. D'Ambrosio*, 156 Ariz. 71, 73 (1988). We find none. A plea agreement waives all non-jurisdictional defenses, errors, and defects which occurred prior to the plea. *State v. Moreno*, 134 Ariz. 199, 200 (App. 1982). The waiver of non-jurisdictional defects includes deprivations of constitutional rights, *Tollett v. Henderson*, 411 U.S. 258, 267 (1973), and all claims of ineffective assistance of counsel not directly related to the entry of the plea, *State v. Quick*, 177 Ariz. 314, 316 (App. 1993). Statements to the court at a change of plea regarding voluntariness are normally binding on the defendant. *See State v. Hamilton*, 142 Ariz. 91, 93 (1984).

¶6 During the plea colloquy Dillon assured the court that his plea was voluntary and he understood that he was waiving his constitutional right to go to trial. The plea agreement signed by Dillon indicated that he was waiving “all motions, defenses, objections or requests which he [had] made or raised.” This would include the right to challenge any previous evidentiary rulings of the court, waiving any complaint about the court’s pretrial ruling under Arizona Rule of Evidence 404(c) that permitted evidence of sexual acts with the victim while in Tennessee, and DNA evidence of his having had a child with the victim while she was under eighteen. Dillon agreed with the factual bases on all three counts to which he pled, including that they occurred in Maricopa County, Arizona.

¶7 Dillon also claims his plea was involuntary and that his plea counsel was ineffective for not fully investigating the case. Other than attorney notes, Dillon attaches no documentation or third-party affidavits to support his claims of ineffective assistance of counsel, or that his plea was involuntary. *See* Ariz. R. Crim. P. 32.5(d).<sup>1</sup> Likewise, any claim of “newly discovered material facts” is not adequately supported for relief under Rule 32.1(e).<sup>2</sup>

¶8 Dillon’s claim that Arizona lacked jurisdiction over the acts he admitted occurred in Arizona is without merit. Subject matter jurisdiction under Arizona Revised Statutes section 13-108 may be raised at any time. *See State v. Flores*, 218 Ariz. 407, 410, ¶ 6 (App. 2008). Dillon never

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<sup>1</sup> Dillon does attach notes from his counsel indicating that he may have expressed second thoughts about the plea to his spouse, but a notation the day of sentencing states, “Client is ready to proceed.”

<sup>2</sup> We also note that his claim also involves the allegations in counts that were dismissed as part of the plea agreement.

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denied being in Arizona during the charged events of April 29, 2003 to April 28, 2004, to which he ultimately admitted. His assertion is really that he was dishonest with the court when he admitted to the court that the crimes against his step-daughter occurred while he was in Arizona, before he left for Tennessee in 2006.

¶9 The factual basis to support a plea may be ascertained from the extended record. *State v. Sodders*, 130 Ariz. 23, 25 (App. 1981). There was ample evidence from the indictment, a recorded victim interview provided to the superior court on the 404(c) issue, the court's own findings that the acts commenced in Maricopa County, Arizona, the pre-sentence report, and State pleadings which included police reports, to show Dillon committed the acts to which he admitted in open court and that they occurred in Arizona. One of Dillon's own attachments reflects an officer interview with the victim that reflected multiple acts occurred in Maricopa County, Arizona.

¶10 During the colloquy, Dillon pled guilty to all three counts, which included as part of the factual bases that they occurred in Maricopa County, Arizona. Dillon did not dispute that he was present in Arizona during the timeframes when the charged acts occurred.

CONCLUSION

¶11 We grant review but deny relief.



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