

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

ELIAS UBALDO VILLA, *Petitioner*.

No. 1 CA-CR 20-0044 PRPC  
FILED 9-29-2020

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Petition for Review from the Superior Court in Maricopa County  
No. CR2015-137001-001  
The Honorable John Christian Rea, Judge

**REVIEW GRANTED AND RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Daniel Strange  
*Counsel for Respondent*

Maricopa County Office of the Legal Advocate, Phoenix  
By Kerri L. Chamberlin  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Judge Randall M. Howe delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge Cynthia J. Bailey joined.

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**HOWE**, Judge:

¶1 Elias Ubaldo Villa petitions this court for review from the dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure (Rule) 33.<sup>1</sup> We have considered the petition for review and, for the reasons stated, grant review and deny relief.

**BACKGROUND**

¶2 After he was charged with one count of disorderly conduct (domestic violence), a class 6 felony and dangerous offense, Villa underwent a Rule 11 evaluation to determine his competency to stand trial. The superior court subsequently considered medical reports prepared by two psychologists and found Villa competent. Approximately nine months later, Villa was again subject to a competency evaluation. On January 17, 2017, the court found Villa competent and “the current medication regimen is necessary to ensure [Villa’s] ongoing competency.”

¶3 On January 26, 2017, Villa pleaded guilty to an amended count of disorderly conduct as a non-dangerous offense, and the superior court imposed a three-year probation term. Villa proceeded to violate conditions of his probation on two occasions, and the court twice reinstated probation.

¶4 Thereafter, Villa timely initiated PCR proceedings to challenge the validity of his plea. Villa argued he did not voluntarily and

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. *State v. Botello-Rangel*, 248 Ariz. 429, 430 ¶ 1 n.1 (App. 2020). The amended rules apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because no substantive changes to the respective rules relate to this decision, we apply and cite to the current rules.

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intelligently plead guilty because he had not taken psychiatric medication before the change of plea hearing “and he informed the court of this fact[.]” Villa further claimed his lawyer provided ineffective assistance by allowing him to plead guilty despite his incompetence to do so. The superior court summarily dismissed the petition.

**DISCUSSION**

¶5 Villa argues the superior court erred by summarily dismissing his PCR petition because he informed the court at the change of plea hearing that he had not taken the medication necessary for him to competently plead guilty. Villa also repeats his claim of ineffective assistance of counsel. Underlying both claims is Villa’s assertion that he was not competent at the change of plea hearing and he would have not plead guilty had he been competent. That assertion is not supported by the record.

¶6 Absent an abuse of discretion or error of law, this court will not disturb the superior court’s ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). The petitioner bears the burden of establishing an abuse of discretion. *State v. Poblete*, 227 Ariz. 537, 538 ¶ 1 (App. 2011).

¶7 Contrary to Villa’s implication, he did not inform the superior court at the change of plea hearing that he failed to take medication upon which his competency depended. He simply answered, “No” to the court’s question, “Have you had any drugs, alcohol, or medication in the last 24 hours?” Given the context, that question cannot reasonably be interpreted as referring to the psychiatric medication apparently required to maintain Villa’s competency; rather, it was a reference to medication that, like “drugs [or] alcohol” could *negatively* impact Villa’s ability to comprehend the proceeding.

¶8 The transcript of the change of plea hearing does not otherwise indicate Villa had any difficulty in comprehending the proceeding, let alone that his confusion was so apparent the superior court should have inquired into Villa’s mental status. *See* Ariz. R. Crim. P. 11.1(a)(2) (“‘Incompetence’ means a defendant is unable to understand the nature and objective of the proceedings or to assist in his or her defense because of a mental illness, defect, or disability.”); *see also* *State v. Amaya-Ruiz*, 166 Ariz. 152, 162 (1990) (noting trial courts are “under a continuing duty to inquire into a defendant’s competency, and to order a [Rule] 11 examination sua sponte if reasonable grounds exist”); *State v. Salazar*, 128 Ariz. 461, 462 (1981) (“Reasonable grounds exist if there is sufficient

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evidence to indicate that the defendant is not able to understand the nature of the proceedings against him and to assist in his defense.”). Indeed, the record fully supports the court’s finding that Villa’s guilty plea was knowing, intelligent, and voluntary.

¶9 On this record, Villa fails to establish an abuse of the superior court’s discretion.

**CONCLUSION**

¶10 We grant review and deny relief.



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