

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

LOUIS JAMES MANGANIELLO, JR., *Petitioner*.

No. 1 CA-CR 20-0503 PRPC
FILED 6-15-2021

Petition for Review from the Superior Court in Maricopa County
No. CR2015-001695-001
The Honorable Geoffrey H. Fish, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Amanda M. Parker
Counsel for Respondent

Louis James Manganiello, Jr., Eloy
Petitioner

MEMORANDUM DECISION

Judge Brian Y. Furuya delivered the decision of the Court, in which
Presiding Judge Kent E. Cattani and Judge Samuel A. Thumma joined.

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FURUYA, Judge:

¶1 Petitioner Louis James Manganiello, Jr. 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.

¶2 Manganiello pleaded guilty to trafficking in the identity of another, a class two felony, as a repetitive offender. Following the terms of the plea agreement, the superior court sentenced Manganiello to a mitigated term of 10.5 years in prison with 463 days of presentence incarceration credit. Manganiello timely initiated post-conviction relief proceedings and appointed counsel found no viable claims. Manganiello then filed a *pro se* petition claiming that he was entitled to additional presentence incarceration credit; his attorney provided ineffective assistance of counsel; his conviction and sentence was obtained through a violation of his constitutional rights including an excessive fine, double jeopardy, and pre and post indictment delays; fundamental error existed in the grand jury indictment; prosecutorial misconduct; and the court lacked jurisdiction over his conviction and sentence. After the State responded, the court summarily dismissed the petition. This petition for review followed.

¶3 Absent an abuse of discretion or error of law in the exercise of such discretion, this court will not disturb the superior court's ruling on a petition for post-conviction relief. *See State v. Quijada*, 246 Ariz. 356, 363, ¶ 21 (App. 2019) (citing *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012)); *see also State v. King*, 250 Ariz. 433, 438, ¶ 21 (App. 2021).

¶4 In his petition for review, Manganiello argues that the superior court should have granted him relief from his convictions and sentences because the State filed – and the court relied upon – an untimely response. But courts have discretion to consider late motions. *State v. Vincent*, 147 Ariz. 6, 8 (App. 1985) (noting that because the court has discretion to extend time for filing motions, the court must necessarily have discretion to consider late ones). And in any event, even if the court had disallowed the State's response and struck it as untimely, this alone would not have entitled Manganiello to the relief he requested. *See State v. Cawley*, 133 Ariz. 27, 29 (App. 1982) (“The fact that the state filed no written response requires no explanation and the trial court is not bound to grant appellant's motion just because the state failed to respond to it.”). Thus, the court did not abuse its discretion by considering the State's untimely response.

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¶5 Manganiello further claims the prosecutor committed misconduct by forging the plea agreement and filing it with the superior court. But his conclusory assertions are unsupported by affidavits or other evidence and lack reference to the record. *See* Ariz. R. Crim. P. 33.16(c)(2)(C) (requiring a petition to include specific references to the record); *State v. Donald*, 198 Ariz. 406, 414, ¶ 21 (App. 2000) (stating that to proceed with a claim for post-conviction relief from an accepted plea agreement, “the defendant’s challenge must consist of more than conclusory assertions and be supported by more than regret”).

¶6 Manganiello additionally attempts to incorporate by reference in his petition certain documents and arguments originally presented in his filings before the superior court. However, this practice is impermissible in a petition for review. Ariz. R. Crim. P. 33.16(c)(2)(B) (requiring a petition to contain “a statement of issues the trial court decided that the defendant is presenting for appellate review”); Ariz. R. Crim. P. 33.16(d) (stating a petition “must not incorporate any document by reference”); *see also State v. Bortz*, 169 Ariz. 575, 576–77 (App. 1991) (incorporating petition for post-conviction relief by reference is inappropriate); *State v. Rodriguez*, 227 Ariz. 58, 61, ¶ 12 n.4 (App. 2010) (declining to address argument raised in superior court but not presented in petition for review). Instead, a petitioner must strictly comply with Arizona Rule of Criminal Procedure 33 or be denied relief. *State v. Carriger*, 143 Ariz. 142, 146 (1984) (interpreting an older version of the same rule). Thus, Manganiello has abandoned and waived the issues not properly presented in his petition for review. *Rodriguez*, 227 Ariz. at 61, ¶ 12 n.4.

¶7 For the foregoing reasons, we grant review but deny relief.



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