

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

FEB 14 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0452-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JORDAN MICHAEL BENJAMIN,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201000563

Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

Edward G. Rheinheimer, Cochise County Attorney
By Roger H. Contreras

Bisbee
Attorneys for Respondent

Jordan Benjamin

Douglas
In Propria Persona

H O W A R D, Chief Judge.

¶1 Pursuant to a plea agreement, petitioner Jordan Benjamin was convicted of attempted possession of a dangerous drug for sale and misconduct involving weapons by knowingly using or possessing a deadly weapon during the commission of a felony drug offense. The trial court sentenced Benjamin to the presumptive 3.5-year prison sentence,

to be followed by a four-year term of supervised probation. After Benjamin's attorney filed a notice citing *Montgomery v. Sheldon*, 181 Ariz. 256, 260, 889 P.2d 614, 618 (1995), and stating she could find "no claims which could be raised under Rule 32," Benjamin filed a supplemental, pro se petition for post-conviction relief¹ pursuant to Rule 32, Ariz. R. Crim. P. Benjamin now challenges the court's summary denial of that petition and his motion for reconsideration.² "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 On review, Benjamin raises various claims of ineffective assistance of trial counsel. He asserts counsel failed to provide him with a written copy of the plea agreement "[un]til[] after incarceration"; advise him of the terms of the plea agreement, including the anticipated sentence for count one; and object to alterations to the sentencing terms in the plea agreement. He asks that we remand for resentencing on count one, and either vacate the conviction on count two or order that his probation term be concurrent with his prison sentence. In order to state a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel's performance fell below an objectively reasonable professional standard and that the deficient performance was

¹Although Benjamin called his petition for post-conviction relief a petition for review directed to the court of appeals, the trial court correctly treated it as a pro se supplemental petition for post-conviction relief.

²Because Rule 32 contains no provision for a motion for reconsideration, we construe Benjamin's pleading as a motion for rehearing, which is permitted by Rule 32.9(a).

prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006).

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Benjamin’s petition for post-conviction relief. The court did so in a detailed and thorough minute entry order that clearly identified Benjamin’s arguments and correctly ruled on them in a manner that will allow any future court to understand their resolution. We therefore approve and adopt the court’s ruling and see no need to restate it here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Because the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.