

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

JUN -6 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0490-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
ALEC JORDAN HOLTZ,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PINAL COUNTY

Cause No. S1100CR200901265

Honorable Robert C. Brown, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

M. Lando Voyles, Pinal County Attorney
By Jason Holmberg

Florence
Attorneys for Respondent

Alec J. Holtz

Florence
In Propria Persona

ECKERSTROM, Presiding Judge.

¶1 Petitioner Alec Holtz was convicted pursuant to a plea agreement of one count of kidnapping and two counts of attempted sexual conduct with a minor, all dangerous crimes against children, and sentenced to a twenty-four-year prison term

followed by concurrent, lifetime terms of supervised probation. In his petition for review, he challenges the trial court's dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., and denial of his motion for rehearing; the court rejected his challenges to the validity of his guilty pleas on a variety of grounds and his contention that trial counsel had rendered ineffective assistance. We will not disturb the rulings unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We see no such abuse here.

¶2 After Holtz filed a notice of post-conviction relief, appointed counsel filed a notice pursuant to Rule 32.4(c) stating she had reviewed the record and could not find a colorable claim. Holtz then filed a pro se petition in which he asserted the following claims: trial counsel had rendered ineffective assistance in numerous respects and had a conflict of interest; Holtz had not entered into the plea agreement knowingly, voluntarily, and intelligently, and the guilty pleas were not supported by sufficient factual bases; and he is "factually innocent," as contemplated by Rule 32.1(h), such that no reasonable fact-finder would have found him guilty of the offenses. The trial court dismissed the petition without an evidentiary hearing and denied Holtz's motion for rehearing.

¶3 In the first twenty pages of his petition for review, Holtz describes various circumstances and events that preceded the change-of-plea proceeding, including his arrest, law enforcement officers' questioning of him and various witnesses, and the allegedly unlawful search of his home. He also contends the state failed to provide him with certain evidence, he criticizes the grand jury proceeding, and he points to the trial court's rulings on pretrial motions. Although he asserts the trial court's ruling on his

petition for post-conviction relief is erroneous in a variety of respects, he has not persuaded this court that the trial court abused its discretion.

¶4 The court did not, as Holtz maintains, “ignore[] the transcript of the Change of Plea hearing,” but made clear in its ruling that it relied on the transcript in determining the court had not coerced Holtz and had reviewed the plea agreement with him. Nor did the court misapply the law and “confuse[] several facts” or add facts that were not supported by the record, as Holtz suggests.

¶5 Rather, the trial court thoroughly addressed the claims Holtz had raised, which Holtz essentially reasserts in his petition for review, resolving them correctly based on the applicable law and the record before it. We note, too, that in determining whether Holtz had entered knowing, voluntary, and intelligent guilty pleas and in reviewing the claims in the post-conviction proceeding, the court was entitled to rely on Holtz’s responses to the court’s questions at the change-of-plea hearing and his assurances that he understood the agreement and had not been threatened or coerced. *See State v. Hamilton*, 142 Ariz. 91, 93, 688 P.2d 983, 985 (1984); *see also State v. Djerf*, 191 Ariz. 583, ¶ 25, 959 P.2d 1274, 1283 (1998) (“defendant’s appropriate and rational responses” relevant to conclusion that defendant fully understood consequences of waiver).

¶6 No purpose would be served by restating the trial court’s thorough, well-reasoned ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rather, because the ruling is correct and Holtz has not persuaded us otherwise, we

adopt that ruling. Similarly, we have no basis for disturbing the court's denial of Holtz's motion for rehearing. Thus, we grant Holtz's petition for review but deny relief.

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller

MICHAEL MILLER, Judge