

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 2013-0141-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
EDGAR EDUARDO VISAIZ-RODRIGUEZ,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009048522001SE

Honorable Connie Contes, Judge

REVIEW GRANTED; RELIEF DENIED

Edgar Visaiz-Rodriguez

Florence  
In Propria Persona

K E L L Y, Judge.

¶1 Pursuant to a plea agreement, petitioner Edgar Visaiz-Rodriguez was convicted of five counts of attempted molestation of a child. The trial court sentenced him to consecutive prison terms totaling thirty-five years, to be followed by two concurrent terms of lifetime probation. After appointed counsel notified the court she had reviewed the record and was “unable to find any claims for relief to raise” on Visaiz-Rodriguez’s behalf, he filed a pro se petition for post-conviction relief pursuant to Rule

32, Ariz. R. Crim. P. Visaiz-Rodriguez now seeks review of the court’s summary dismissal of his petition. Absent a clear abuse of discretion, we will not disturb the trial court’s ruling on post-conviction relief. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 In his pro se petition for review, Visaiz-Rodriguez argues his sentences are excessive and asks us to review the trial court’s order dismissing that claim and finding counsel was not ineffective for failing to advise him he could ask the court to enter a special order allowing him to petition the board of executive clemency to have his sentences commuted.<sup>1</sup> See A.R.S. § 13-603(L) (if trial court “is of the opinion that a sentence that the law requires the court to impose is clearly excessive, [it] may enter a special order allowing the person sentenced to petition the board of executive clemency for a commutation of sentence”). Notwithstanding the fact that the sentences were imposed in accordance with the plea agreement, that Visaiz-Rodriguez waived any “objections . . . to . . . [the] imposition of a sentence upon him consistent with [the plea] agreement,” and his acknowledgement in the reply to his petition below that he “is not attacking his sentence” but the fact that he was not advised about the provisions in § 13-603(L), Visaiz-Rodriguez nonetheless argues the court incorrectly dismissed his petition.

¶3 With respect to the claims Visaiz-Rodriguez raises on review, the trial court identified them and resolved them correctly and in a manner permitting any court to

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<sup>1</sup>Although Visaiz-Rodriguez raised a claim of ineffective assistance of counsel in his petition for post-conviction relief, he does not reassert it on review, so we do not address it. See Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall include reasons why petition should be granted).

review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by restating the court's ruling in its entirety. *See id.* Rather, we adopt the court's ruling with respect to the claims now before us on review.

¶4 Because Visaiz-Rodriguez has not sustained his burden on review of establishing the trial court abused its discretion in dismissing his petition for post-conviction relief, we grant the petition for review, but deny relief.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge