

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 2013-0143-PR |
| |) | DEPARTMENT B |
| Respondent, |) | |
| |) | <u>MEMORANDUM DECISION</u> |
| v. |) | Not for Publication |
| |) | Rule 111, Rules of |
| JAMES ROBERT TOMLINSON, |) | the Supreme Court |
| |) | |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2010104803001DT

Honorable Kathleen Mead, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

James Robert Tomlinson

Tucson
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 James Tomlinson petitions this court for review of the trial court's summary denial of his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We grant review but deny relief.

¶2 Tomlinson pled guilty to trafficking in stolen property and was sentenced to an eight-year prison term. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and had been “unable to find any claims for relief to raise in post-conviction proceedings.” Tomlinson then filed a pro se petition for post-conviction relief claiming his “parole” was “being violated” due to his conviction and arguing the eight-year sentence imposed should be concurrent “to the parole violation” because the plea agreement did not “prohibit[]” concurrent sentences and his conviction and his parole violation were based on the same conduct.¹

¶3 The trial court summarily denied relief, noting Tomlinson had been informed that “any sentence imposed in his new matter could be ordered to be served consecutive to the prison term he was serving.” The court further noted that, pursuant to A.R.S. § 13-711, sentences are to run consecutively unless the sentencing court directs otherwise, and that “if the offense was committed while the defendant was under the jurisdiction of the State Department of Corrections, the sentence ‘shall run consecutively to the undischarged term of imprisonment.’”

¶4 On review, Tomlinson again contends his sentence should be concurrent with any prison term resulting from his parole violation. He apparently has abandoned his earlier claim, however, that the sentence should be concurrent because his conviction and parole violation were based on the same conduct. Instead, as we understand his

¹Tomlinson attached to his petition a “request for warrant of arrest” signed by a parole officer, but nothing in the record shows whether Tomlinson’s parole ultimately was revoked.

arguments, he asserts that a consecutive sentence is “a breach of the [plea] agreement,” noting that the state and presentence report did not recommend, and the trial court did not expressly order, that his sentence be consecutive. He additionally asserts he “was of the understanding” when entering his plea that the court had authority to order the sentence be concurrent. But Tomlinson did not raise these arguments in his petition below; accordingly, we do not address them further. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court will not consider issues not presented to trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review).

¶5 Tomlinson has not identified any error in the trial court’s summary rejection of his petition for post-conviction relief. Thus, although we grant review, we deny relief.

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

CONCURRING:

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

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