

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

JUL 31 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0183-PR
)	DEPARTMENT B
Respondent,)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
v.)	Rule 111, Rules of
)	the Supreme Court
PAUL ANDREW PEREZ JR.,)	
)	
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20090628

Honorable Tina R. Ainley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

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Attorneys for Respondent

C. Kenneth Ray II, P.C.

By C. Kenneth Ray II

Prescott

Attorney for Petitioner

K E L L Y, Presiding Judge.

¶1 Petitioner Paul Perez Jr. seeks review of the trial court's order dismissing his petition for post-conviction relief in which he challenged the court's imposition of an aggravated, 1.5-year prison term on one count of sexual conduct with a minor after it had revoked his probation, and its imposition of consecutive rather than concurrent prison terms, which deprived him of additional presentence incarceration credit on the prison term. We will not disturb the 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 see no such abuse here.

¶2 Pursuant to a plea agreement, Perez was convicted of two counts of sexual conduct with a minor, class six felonies. In accordance with the terms of the plea agreement, the trial court sentenced him in January 2010 to the presumptive prison term of one year on count one, and suspended the imposition of sentence on count two, placing him on a seven-year term of supervised probation to be served after he completed the prison term on count one. Perez was released from prison after completing his sentence on count one. In January 2011, the state filed a petition to revoke probation, alleging Perez had violated conditions of his probation by committing sexual assault and drinking alcohol. After Perez admitted the violation,¹ the court revoked his probation on count

¹The new offense resulted in Perez's conviction pursuant to a plea agreement of sexual assault, a class two felony, in Yavapai County Cause No. CR2011-00082. He was sentenced in that case and the instant cause at the same time.

two and sentenced him to the maximum prison term of 1.5 years, with credit for 223 days of presentence incarceration.²

¶3 In his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., Perez asserted the conviction on count two “was in violation of the right not to be placed twice in jeopardy for the same offense,” challenged the sentence imposed following the revocation of probation, and claimed he was entitled to presentence incarceration credit on count two for the time he had served after sentencing on count one.

¶4 The trial court rejected Perez’s claims and dismissed the petition without an evidentiary hearing in a well-reasoned minute entry order in which it identified and correctly resolved the claims, permitting review by this court. No purpose would be served by restating the ruling in its entirety here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Rather, because the ruling is correct and Perez has not persuaded us otherwise, we adopt it. We note in particular that, even assuming Perez’s challenge to the court’s imposition of consecutive prison terms was not precluded under Rule 32.2, the factual bases for the convictions established that they were based on two sexual acts for purposes of A.R.S. § 13-116, oral sexual contact and vaginal intercourse. Consecutive prison terms thus were not unlawful. And Perez has not

²On the conviction for sexual assault, which was the basis for the revocation of probation in the instant case, the trial court sentenced Perez to an aggravated prison term of nine years, to be served consecutively to the 1.5-year term imposed after revoking probation.

established the court abused its broad sentencing discretion when it imposed the 1.5-year prison term or denied his petition for post-conviction relief.

¶5

Thus, we grant Perez's petition for review but deny relief.

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, 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.