

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ADAN MONTALVO,  
*Petitioner.*

No. 2 CA-CR 2013-0271-PR  
Filed November 19, 2013

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

*See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24*

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Petition for Review from the Superior Court in Pima County

No. CR20083395

The Honorable Teresa Godoy, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson

*Counsel for Respondent*  
Adan Montalvo, Lompoc, California

*In Propria Persona*

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**MEMORANDUM DECISION**

Presiding Judge Kelly authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

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K E L L Y, Presiding Judge:

¶1 Adan Montalvo petitions this court for review of the trial court's order summarily denying 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). Montalvo has not met his burden of demonstrating such abuse here.

¶2 In 2009, Montalvo pled guilty to transportation of a dangerous drug. He absconded before sentencing but ultimately was taken into custody and sentenced in 2011. After absconding, Montalvo apparently was incarcerated in federal prison for what he claimed at sentencing was a ten-year term. The court sentenced him to a 2.5-year prison term, to be served consecutively to his federal term.

¶3 Montalvo filed a notice of post-conviction relief and appointed counsel filed a notice stating he had reviewed the record and could not "find any claims for relief to raise in Rule 32 post-conviction proceedings that [Montalvo] wished to pursue." Montalvo then filed a pro se petition arguing his due process rights had been violated when the court considered at sentencing a presentence report "that neither [he] nor defense counsel had an opportunity to review" and because he was not advised that he could withdraw from the plea agreement "given the sentence he was serving" in federal prison. He also argued his trial counsel had been ineffective in failing to object to the imposition of a sentence consecutive to his federal prison term and in failing to request that

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he be permitted to withdraw from the plea based on changed circumstances – his federal incarceration.

¶4 The trial court summarily denied relief. It concluded there had been no due process violation because Montalvo had ample time to review his presentence report and wished to proceed with sentencing despite knowing the state intended to recommend a consecutive sentence. The court further concluded Montalvo had not demonstrated he had a right to withdraw from the plea agreement in these circumstances. The court additionally rejected his claims of ineffective assistance of counsel, concluding counsel had, in fact, challenged the imposition of consecutive sentences and that there was no basis for counsel to seek permission for Montalvo to withdraw from the plea.

¶5 On review, Montalvo reurges his claims but does not address the trial court's ruling or identify any error in the court's analysis. Notably, he fails to cite any authority in support of his contention that his becoming incarcerated in federal prison after he entered his plea and absconded could provide a basis for him to withdraw from that plea or for his proposition that his incarceration could somehow affect the voluntariness of his plea.

¶6 We have reviewed the record and the trial court's ruling and have determined it correctly resolved Montalvo's claims and we need add nothing further to its analysis; accordingly, we adopt the court's ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly identified and ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision"). Accordingly, although review is granted, relief is denied.