

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

IVAN ALBERTO MIRAMONTES,  
*Petitioner.*

No. 2 CA-CR 2015-0260-PR  
Filed September 22, 2015

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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NOT FOR PUBLICATION  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)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Cochise County  
No. CR201400234  
The Honorable Wallace R. Hoggatt, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Dan W. Montgomery, Tucson  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Kelly<sup>1</sup> concurred.

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V Á S Q U E Z, Presiding Judge:

¶1 Ivan Miramontes seeks review of the trial court’s order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Miramontes has not met his burden of demonstrating such abuse here.

¶2 Miramontes pled guilty to illegally conducting an enterprise. The trial court sentenced him to a presumptive 3.5-year prison term. Miramontes sought post-conviction relief, arguing his “sentence was in violation of the constitution due to its excessiveness.” Specifically, he claimed that the court failed to consider his purportedly limited scope of involvement in the offense as a mitigating factor pursuant to A.R.S. § 13-701(E)(4) and that the court gave undue weight to “the scope of the organization” instead “of the facts unique to [him].”

¶3 The trial court summarily dismissed the petition. It observed, *inter alia*, that Miramontes did not urge § 13-701(E)(4) as a basis to find a mitigating factor. It also concluded that, in any event, the facts did not support an argument that Miramontes’s involvement had been minor, referring to a statement in the presentence report that Miramontes had participated “on a regular basis” in the enterprise. This petition for review followed.

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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¶4 On review, Miramontes repeats, largely verbatim, his argument that his sentence was excessive. In addition, he asserts the trial court erred in relying on the presentence report's statement that he was a regular participant in the enterprise, asserting "[t]his is hardly an adequate factual basis for such a significant determination." He cites no authority in support of this argument,<sup>2</sup> and he ignores that his plea agreement expressly permitted the court to find sentencing factors without regard to the rules of evidence. Nor does Miramontes identify any evidence suggesting his role in the enterprise was actually minor.

¶5 We have reviewed the record and are satisfied the trial court correctly rejected Miramontes's sentencing claim in a thorough and well-reasoned minute entry. Accordingly, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly 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").

¶6 Although we grant review, we deny relief.

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<sup>2</sup>Miramontes does suggest the trial court was required to make sentencing findings beyond a reasonable doubt. But, even if Miramontes were correct, that would not require the court to find beyond a reasonable doubt that an unasserted mitigating factor did not exist. Moreover, Miramontes expressly agreed the court would apply a preponderance standard to sentencing findings.