

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MICHAEL ISIDORO SANCHEZ,  
*Petitioner.*

No. 2 CA-CR 2015-0359-PR  
Filed December 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NOT FOR PUBLICATION  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. CR201300346  
The Honorable Karl D. Elledge, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Michael Sanchez, Florence  
*In Propria Persona*

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

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ESPINOSA, Judge:

¶1 Michael Sanchez seeks review of the trial court's order summarily dismissing his 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. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Sanchez has not met his burden of demonstrating such abuse here.

¶2 Sanchez pled guilty to sexual conduct with a minor under the age of fifteen and attempted sexual conduct with a minor under the age of fifteen. Consistent with a stipulation in the plea agreement, the trial court sentenced him to a twenty-five year prison term on the first count to be followed by lifetime probation on the second.

¶3 In court-martial proceedings conducted by the United States Department of Defense, Sanchez had additionally been charged with and pled guilty to numerous sexual offenses involving children. The conduct resulting in those admissions occurred on various military bases, including a base in Arizona. The plea agreement provided that Sanchez's sentence for sexual conduct with a minor "may be consecutive or concurrent to the Sentence he will serve pursuant to his General Court-Martial, at the discretion of the United States Army Commanding General." At sentencing, the trial court authorized the Cochise County Sheriff "to deliver [Sanchez] to the custody of the [Arizona] Department of Corrections," and authorized that department to "carry out [Sanchez's] term of imprisonment."

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¶4 Sanchez sought post-conviction relief, and appointed counsel filed a notice stating he had found “no ground upon which to file a Rule 32 Petition.” Sanchez then filed a pro se petition arguing the prosecutor had committed misconduct by falsely informing the trial court that the state charges and charges in military court were based on different conduct, by agreeing to the stipulation that whether the sentences imposed by the court and in the military matter would run concurrently was left to the military’s discretion, and by concealing communication between her office and the military prosecutors. He further argued that his convictions in both state and military court violated the prohibition against double jeopardy and that the consecutive sentences violated A.R.S. § 13-116. Sanchez also claimed his trial counsel had been ineffective for failing to raise these arguments and had induced him to plead guilty by failing to provide adequate information about the plea and his case. Finally, Sanchez asserted that various materials provided to him by Rule 32 counsel constituted newly discovered evidence. The trial court summary dismissed Sanchez’s petition for post-conviction relief, and this petition for review followed.

¶5 On review, Sanchez briefly summarizes his claims. We reject them for several reasons. First, to the extent he attempts to incorporate by reference his petition below, that procedure is not permitted by our rules. *See State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991). And, in any event, we agree with the trial court that summary rejection was proper. By pleading guilty, Sanchez waived all non-jurisdictional defects save those related to the validity of his plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Thus, his claims of ineffective assistance of counsel are limited “to attacks on the voluntary and intelligent nature of the guilty plea, through proof that the advice received from counsel was not ‘within the range of competence demanded of attorneys in criminal cases.’” *Blackledge v. Perry*, 417 U.S. 21, 30 (1974), quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970).

¶6 “To state a colorable claim of ineffective assistance of counsel,” Sanchez was required to “show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced [him].” *State v. Bennett*, 213 Ariz. 562,

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¶ 21, 146 P.3d 63, 68 (2006), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). And, to show prejudice, he was required to demonstrate there was a reasonable probability he would have rejected the state's plea offer but for his counsel's conduct. See *State v. Donald*, 198 Ariz. 406, ¶¶ 20-21, 10 P.3d 1193, 1201 (App. 2000). Sanchez has not met this requirement. Although he claims counsel did not adequately explain the plea to him, he does not identify what information counsel could have provided him that would have prompted him to reject the state's plea offer. Nor does he claim he would have rejected the plea had he been given more time to consider it.

¶7 Sanchez asserts his convictions in military and state court encompass the same conduct, thus violating the prohibition against double jeopardy and § 13-116. As the trial court correctly noted, however, double jeopardy protections and § 13-116 do not apply to prosecutions in separate jurisdictions. *State v. Berry*, 133 Ariz. 264, 268, 650 P.2d 1246, 1250 (App. 1982); *State v. Everhart*, 169 Ariz. 404, 409, 819 P.2d 990, 995 (App. 1991).

¶8 As to Sanchez's remaining claims, even if we agreed the prosecutor had committed any misconduct, Sanchez has not explained how that conduct influenced his decision to plead guilty. Thus, his claims that the prosecutor made untrue statements to the trial court and withheld correspondence do not warrant relief. See *Quick*, 177 Ariz. at 316, 868 P.2d at 329. Nor has Sanchez identified any newly discovered evidence warranting relief. Not only was the "evidence" he listed in his petition below given to him by counsel, none of it apparently relates to his guilt or innocence, and he does not suggest that – had he been aware of it – he would not have pled guilty.

¶9 Although we grant review, relief is denied.