

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SEAN MICHAEL MCCAIN,
Petitioner.

No. 2 CA-CR 2016-0298-PR
Filed January 12, 2017

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Graham County
No. CR201300151
The Honorable Michael D. Peterson, Judge

REVIEW GRANTED; RELIEF DENIED

Sean McCain, Kingman
In Propria Persona

STATE v. MCCAIN
Decision of the Court

MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Sean McCain seeks review of the trial court’s summary denial of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. For the following reasons, we grant review, but we deny relief.

¶2 Pursuant to a plea agreement, McCain was convicted of one count of knowing or intentional child abuse “[u]nder circumstances likely to produce death or serious physical injury,” a class two felony, A.R.S. § 13-3623(A)(1), and one count of knowing or intentional child abuse “[u]nder circumstances other than those likely to produce death or serious physical injury,” a class four felony, § 13-3623(B)(1). The plea agreement called for a prison sentence between three and ten years for the class two felony and imposition of probation for the class four felony. The trial court sentenced McCain to a nine-year prison term for the first count, based on the following aggravating factors set forth in the plea agreement: (1) Infliction or threatened infliction of serious physical injury, A.R.S. § 13-701(D)(1); (2) The victim suffered physical, emotional, or financial harm, § 13-701(D)(9); and (3) The victim will suffer for the rest of her life from damage caused by the offense, § 13-701(D)(25).¹ The court suspended sentence on the second count

¹ Section 13-701(D) was renumbered without substantive changes in 2014. 2014 Ariz. Sess. Laws, ch. 215, § 21. In this decision, we refer to the current version of the statute. Section 13-701(D)(25) is a “‘catch-all’ aggravator” that “permits the trier of fact to consider ‘[a]ny other factor that the state alleges is relevant to the defendant’s character or background or to the nature or

STATE v. MCCAIN
Decision of the Court

and imposed a term of intensive lifetime probation to commence upon McCain's release from prison.

¶3 The trial court dismissed McCain's untimely, of-right notice of post-conviction relief, but this court remanded the matter for further development and consideration of his claim that his failure to file a timely notice was "without fault on [his] part," Ariz. R. Crim. P. 32.1(f). *State v. McCain*, No. 2 CA-CR 2015-0092-PR, ¶¶ 4, 6-7 (Ariz. App. June 11, 2015) (mem. decision). In a post-conviction relief petition that followed, McCain argued the court impermissibly aggravated his sentence based on § 13-701(D)(1) and (9) because each of those factors "constituted an essential and irreducible element of the offense." See Ariz. R. Crim. P. 32.1(c) (as ground for relief, "sentence imposed exceeded the maximum authorized by law"). The trial court summarily denied relief on this claim, and this petition for review followed.²

¶4 We review a summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here. In its order denying relief, the trial court clearly identified, thoroughly addressed, and correctly resolved the merits of McCain's claims. Moreover, the court ruled in a manner sufficient to permit this or any other court to conduct a meaningful review. See *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Accordingly, no purpose would be served by repeating the court's analysis here.³ To the extent McCain argues

circumstances of the crime.'" *State v. Bonfiglio*, 231 Ariz. 371, ¶ 8, 295 P.3d 948, 950 (2013), quoting A.R.S. § 13-701(D)(25).

²McCain also asked the trial court to vacate the prosecution fee it had imposed at sentencing. See *State v. Payne*, 223 Ariz. 555, ¶ 49, 225 P.3d 1131, 1145 (App. 2009) (holding county prosecution fee not statutorily authorized). The court granted relief on that claim, and that portion of its ruling is not before us on review.

³We note two discrepancies between the record and the trial court's ruling, but both are irrelevant to the court's analysis. First, the court stated in its ruling that McCain had "agreed to" the aggravating factors found by the court. Although the plea

STATE v. MCCAIN
Decision of the Court

the court should have “re-weigh[ed] the mitigating and aggravating factors . . . to determine if the sentencing was fair,” he cites no legal authority permitting that procedure. *See* Ariz. R. Crim. P. 32.1 (specifying grounds for post-conviction relief); *State v. Cazares*, 205 Ariz. 425, ¶ 6, 72 P.3d 355, 357 (App. 2003) (reviewing court will not disturb sentence within statutory limits “unless it clearly appears that the [trial] court abused its discretion”).

¶5 McCain has failed to establish the trial court abused its discretion in summarily denying his post-conviction claim of an illegal sentence. *See Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d at 67. Accordingly, although review is granted, relief is denied.

agreement and sentencing minute entry suggest McCain “admitted” the aggravating factors, at the change of plea and sentencing hearings, McCain told the court he had only “acknowledged” the state’s allegations, “but it would still be up to the Court to determine if those aggravators apply.” The court then found those factors applicable at sentencing. Second, although the court’s ruling identifies A.R.S. § 13-705 as one of the “statutes . . . applicable to this case,” it appears McCain was instead sentenced, in accordance with his plea agreement, under the range of sentences provided in A.R.S. § 13-702(D). Although this may have resulted in an illegally lenient sentence, *see* § 13-705(D), we are without jurisdiction to modify the sentence to reflect the statutorily required minimum. *See State v. Kinslow*, 165 Ariz. 503, 507, 799 P.2d 844, 848 (1990).