

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

FLOYD LEWIS FOSTER JR.,
Petitioner.

No. 2 CA-CR 2017-0047-PR
Filed April 20, 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NOT FOR PUBLICATION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 Pima County
No. CR20143077001
The Honorable Kenneth Lee, Judge

REVIEW GRANTED; RELIEF DENIED

Floyd L. Foster Jr., San Luis
In Propria Persona

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MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Howard and Chief Judge Eckerstrom concurred.

VÁSQUEZ, Judge:

¶1 Petitioner Floyd Foster Jr. seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Foster has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Foster was convicted of possession of methamphetamine for sale and theft of a means of transportation. The trial court sentenced him to enhanced, concurrent, twenty-year prison terms. Foster thereafter sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and had been unable to find any meritorious issue to raise in Rule 32 proceedings.

¶3 In a supplemental, pro se petition, however, Foster argued he had not been "adequately advised of the terms of his plea agreement before signing it." He contended he was unaware he would be required to serve a "flat-time" sentence on his methamphetamine conviction rather than being eligible for earned release credit. He argued counsel had been ineffective in explaining the plea. The trial court summarily denied relief. It also denied Foster's subsequent motion for rehearing, in which he asked, as he had in his reply, that the matter be reassigned so he could call the judge as a witness as he "was the first person to inform [Foster] that he was going to have to serve a flat-time sentence."

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¶4 On review, Foster contends the trial court abused its discretion in denying relief and in denying his request for reassignment. The court, however, clearly identified the claims Foster had raised and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has 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”). In order to obtain relief in a Rule 32 proceeding, a petitioner must do more than contradict what the record plainly shows. *State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998) (claim not colorable when “directly contradicted by the record”). Foster has failed to do so.

¶5 Although we grant the petition for review, we deny relief.