

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EMILY BROOKS LITTLEFIELD,
Petitioner.

No. 2 CA-CR 2017-0412-PR
Filed April 11, 2018

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Maricopa County
Nos. CR2010131647001DT and CR2010139224002DT
The Honorable Danielle J. Viola, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant, Deputy County Attorney, Phoenix
Counsel for Respondent

Janelle A. Mc Eachern, Chandler
Counsel for Petitioner

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MEMORANDUM DECISION

Presiding Judge Staring authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Brearcliffe concurred.

STARING, Presiding Judge:

¶1 Emily Littlefield seeks review of the trial court's orders summarily denying her of-right petitions for post-conviction relief filed in two cause numbers pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those orders unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Littlefield has not shown such abuse here.

¶2 In two cause numbers, Littlefield pled no contest to aggravated assault and criminal damage. The trial court suspended the imposition of sentence and placed Littlefield on concurrent terms of probation, the longer of which is four years. Littlefield sought post-conviction relief, filing identical petitions in each cause number arguing she should be permitted to withdraw from her pleas. She asserted the court had erred by treating her pleas as no-contest pleas rather than having been entered pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970),¹ and there were defects in the plea process including the factual basis and her understanding of the potential sentences she could face. She also argued counsel had been ineffective in failing to raise these issues and properly advise her whether to enter a plea rather than proceed to trial. In her replies to the state's responses, she additionally claimed counsel had been ineffective by "failing to explain to [her] the difference between an *Alford* and a No-contest plea." Without addressing the latter argument, the court summarily denied relief in both cause numbers. This petition for review followed.

¹"[A] plea of no contest 'is an admission of guilt for the purposes of the case.'" *State v. Stewart*, 131 Ariz. 251, 254 (1982), quoting *Hudson v. United States*, 272 U.S. 451, 455 (1926). A plea pursuant to *Alford*, in contrast, is "a plea of guilty with a protestation of innocence." *Id.* We note that, constitutionally and "for the purpose of withdrawal, there is . . . no material difference between an *Alford* plea and a no contest plea." *Washington v. Superior Court*, 180 Ariz. 91, 94 (App. 1994).

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¶3 On review, Littlefield again argues that trial counsel was ineffective for failing to “properly advise her of the ramification of entering No-contest over *Alford* pleas in both her matters.” But, because Littlefield did not raise this argument until her reply below, the trial court was not required to address it, and neither is this court. *See State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7 (App. 2009) (trial court need not consider issues first raised in petitioner’s reply); *see also* Ariz. R. Crim. P. 32.9(c)(1)(A) (permitting petition “for review of the [trial court’s] decision”).

¶4 Littlefield also asserts the trial court was required to ensure she “understood the difference” between an *Alford* plea and a no-contest plea. She cites nothing in the record, however, indicating the parties discussed an *Alford* plea and no authority suggesting the court had an obligation to address the issue with Littlefield. Rule 32.9(c)(4) requires a petition for review to contain “specific references to the record” and citations to “supporting legal authority.” By failing to provide either, Littlefield has waived this claim on review, and we do not address it further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16 (App. 2013) (insufficient argument waives claim on review).

¶5 We grant review but deny relief.