

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

HANNAH MARIE HAUGH,
Petitioner.

No. 2 CA-CR 2019-0077-PR
Filed June 27, 2019

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NOT FOR PUBLICATION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 Pima County
No. CR20171654001
The Honorable John Hinderaker, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Joel Feinman, Pima County Public Defender
By Abigail Jensen, Deputy Public Defender, Tucson
Counsel for Petitioner

STATE v. HAUGH
Decision of the Court

MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Pursuant to a plea agreement, Hannah Haugh pled guilty to solicitation to unlawfully possess a narcotic drug and possession of drug paraphernalia. In her petition for review, she contends the trial court erred in denying her petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in which she challenged the fine imposed as a condition of probation, arguing it was not authorized under A.R.S. § 13-901.01. We grant the petition for review but because the trial court did not abuse its discretion, we deny relief. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2005).

¶2 Haugh was charged with one count of possession of a narcotic drug (heroin), and one count of possession of drug paraphernalia. Pursuant to a plea agreement, Haugh pled guilty in May 2017 to an amended count of solicitation to possess a narcotic drug and an amended count of possession of drug paraphernalia, class six, undesignated felonies and first offenses for purposes of § 13-901.01. The agreement provided that if the offenses were treated as felonies, the court could require Haugh to pay a fine of \$150,000, plus a surcharge, and if the offenses were treated as misdemeanors, the court could require her to pay a fine of up to \$2,500, also with a surcharge. The agreement further provided that “[a]s a condition of this agreement, the defendant agrees to pay a fine of \$1,000.”

¶3 At a combined change-of-plea and sentencing hearing, the trial court accepted the plea, suspended the imposition of sentence, and placed Haugh on concurrent, eighteen-month terms of probation. The court imposed various specific fines and charges, found the \$2,000 fine and surcharges waived, but, “pursuant to Plea Agreement,” imposed a fine of \$1,000. Haugh challenged the fine by filing a motion under Rule 24.3, Ariz. R. Crim. P., to correct the sentence. After that motion was withdrawn, Haugh filed a renewed motion to correct the sentence, arguing the fine was unlawful because it did not comply with § 13-901.01(A). The court denied the motion.

STATE v. HAUGH
Decision of the Court

¶4 In her petition for post-conviction relief under Rule 32.1(c), Haugh again challenged the \$1,000 fine as unlawful because it is not authorized by § 13-901.01 for first-time drug offenders. The statute states: “Notwithstanding any law to the contrary, any person who is convicted of the personal possession or use of a controlled substance or drug paraphernalia is eligible for probation. The court shall suspend the imposition or execution of sentence and place the person on probation.” § 13-901.01(A). Haugh asserted that the statute does not authorize the imposition of a fine as a condition of probation, which is authorized under the general probation statute, A.R.S. § 13-901(A). Relying on *Calik v. Kongable*, 195 Ariz. 496 (1999), and the history of § 13-901.01, she insisted a fine may not be imposed for first-time drug offenders. Alternatively, she argued that because the statute requires the court to suspend the imposition of sentence, and because a fine is part of a sentence, the fine must be vacated.

¶5 The trial court summarized Haugh’s claim and denied relief in a thorough, well-reasoned and correct ruling. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993). The court reviewed the language of the relevant statutory provisions¹ and the discussion in *Calik* of the intent behind § 13-901.01² based on its language and history, and the court distinguished incarceration from the imposition of a fine. In her petition for review, Haugh essentially restates the arguments she presented to the trial court. Because she has not persuaded this court that the trial court erred and thereby abused its discretion, we adopt its ruling. *Id.* *See also State v. Miller*, 226 Ariz. 202, ¶ 7 (App. 2010) (trial court abuses discretion if it errs in applying the law).

¶6 We grant the petition for review but deny relief.

¹In particular, the trial court relied on § 13-901(J), which provides that when a defendant is placed on probation pursuant to § 13-901.01, “the court may impose any term of probation that is authorized pursuant to this section and that is not in violation of § 13-901.01.”

²The statute codified the 1996, voter-approved Drug Medicalization, Prevention, and Control Act, or Proposition 200. *See State v. Siplivy*, 228 Ariz. 305, ¶ 4 (App. 2011).