

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DUSTIN ROBERT TUTTLE,
Petitioner.

No. 2 CA-CR 2020-0185-PR
Filed _____

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NOT FOR PUBLICATION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
No. CR2015154909001DT
The Honorable Bradley H. Astrowsky, Judge

REVIEW GRANTED; RELIEF DENIED

Dustin R. Tuttle, Kingman
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 Dustin Tuttle seeks review of the trial court’s ruling summarily dismissing his petition for post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Tuttle has not shown such abuse here.

¶2 Tuttle pled no contest to child molestation and two counts of attempted sexual conduct with a minor. The trial court sentenced him to a twenty-year prison term for child molestation and, for both counts of attempted sexual conduct with a minor, suspended the imposition of sentence and placed Tuttle on concurrent terms of lifetime probation.

¶3 Tuttle sought post-conviction relief and appointed counsel filed a notice stating she had reviewed the record but had found no “claims for relief to raise in post-conviction relief proceedings.” Tuttle then filed a pro se petition arguing the court had erred in denying his request for new advisory counsel, the state had “incorrectly filed” a motion to admit evidence pursuant to Rule 404(b) and (c), Ariz. R. Crim. P., and the court violated his right to represent himself by interfering with his attempt to “build a defense.” He also asserted counsel had been ineffective in failing to adequately investigate and litigate his case.

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). “The amendments apply to all cases pending on the effective date unless a court determines that ‘applying the rule or amendment would be infeasible or work an injustice.’” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) (quoting Ariz. Sup. Ct. Order R-19-0012). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *Id.*

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¶4 In its response to Tuttle’s petition, the state argued that he was not entitled to relief because he had pled guilty, thus “waiv[ing] all non-jurisdictional defenses and defects occurring prior to the plea.” In his reply, Tuttle asserted for the first time that his counsel had advised him he would be permitted to raise his claims if he pled no contest and, had he understood that was incorrect, he would not have entered the plea. The trial court denied relief without mentioning this claim, concluding his plea “forecloses him from raising any claims or defects that occurred prior thereto.” Tuttle filed a motion for rehearing repeating his argument that he would not have pled no contest had he understood there would be claims he could not raise in post-conviction proceedings, and asking for leave to amend his petition. The court denied that motion, stating it had “already addressed all issues [Tuttle] raised.” This petition for review followed.

¶5 On review, Tuttle asserts the trial court should have considered his claim that he had pled no contest only because his attorneys misled him about the claims raisable in post-conviction relief after entering a no-contest plea.² But a trial court is not required to consider arguments first raised in a reply. *State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7 (App. 2009). And, insofar as Tuttle’s reply could be read as an attempt to amend the petition, he has developed no argument that his belated discovery of a possible claim constitutes “good cause” as required for amendment under Rule 33.9(d). Lastly, although Tuttle asked to file an amended petition in his motion for rehearing, nothing in Rule 33 permits amendment after a petition has been dismissed. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980); *see also* Ariz. R. Crim. P. 33.14(a) (motion for rehearing limited to “court’s alleged errors”).

¶6 We grant review but deny relief.

²Tuttle does not argue the trial court erred in rejecting the claims raised in his petition for post-conviction relief.