

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

THADDAEUS SANCHEZ RUELAS,  
*Petitioner.*

No. 2 CA-CR 2022-0012-PR  
Filed April 29, 2022

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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NOT FOR PUBLICATION  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).*

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Petition for Review from the Superior Court in Pima County  
No. CR20151461002  
The Honorable Christopher Browning, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Mark Brnovich, Arizona Attorney General  
By Nanette C. Morrow, Assistant Attorney General, Tucson  
*Counsel for Respondent*

Law Offices of Erin E. Duffy PLLC, Tucson  
By Erin E. Duffy  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

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

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ESPINOSA, Judge:

¶1 Thaddaeus Ruelas seeks review of the trial court’s ruling partially dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Ruelas has shown no such abuse here.

¶2 Following a jury trial, Ruelas was convicted of seven counts of using a wire or electronic communication in a drug-related transaction, six counts of transporting, selling, or offering to sell methamphetamine, four counts of misconduct involving weapons, and one count each of possession of heroin, possession of cocaine, and conspiracy. The trial court sentenced Ruelas to a combination of concurrent and consecutive, enhanced prison terms totaling 50.5 years. On appeal, we affirmed Ruelas’s convictions and sentences with the exception of his sentence for possession of heroin, which we vacated and remanded for resentencing.<sup>1</sup> *State v. Ruelas*, No. 2 CA-CR 2016-0344, ¶ 20 (Ariz. App. May 30, 2018) (mem. decision).

¶3 Ruelas then sought post-conviction relief. He argued the trial court improperly relied upon the presence of a deadly weapon as an aggravating factor, rendering his sentences illegal, and incorrectly imposed consecutive sentences for counts one and two in violation of A.R.S. § 13-116. He also asserted trial and appellate counsel were ineffective by failing to raise these claims. In June 2021, the court determined the consecutive sentences for counts one and two were improper and resentenced Ruelas

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<sup>1</sup>Upon remand, the trial court imposed a twelve-year sentence on that count, instead of the twenty-eight-year sentence it had previously imposed.

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for those counts,<sup>2</sup> but summarily dismissed Ruelas's claim regarding the deadly weapon aggravator and his related claims of ineffective assistance of counsel. This petition for review followed.

**Factual and Procedural History**

¶4 A summary of the procedural history of this case is helpful to understand our ruling on review. At the conclusion of the trial, Ruelas waived the right to have a jury find aggravating factors for sentencing. The parties discussed the aggravators and agreed with the trial court that pecuniary gain and the presence of accomplices ("for certain counts") were appropriate. In response to the state's request to consider the presence of a deadly weapon as an aggravator, *see* A.R.S. § 13-701(D)(2), the court stated it did not "think [it was] inclined" to do so, noting the appellate court might consider it "double counting." Although the state disagreed, for purposes of "leniency," it accepted the court's decision without further objection, after which the court added it did not believe the state "need[ed]" that aggravating factor in any event.

¶5 However, in its sentencing memorandum, the state erroneously stated that the trial court had found four enumerated aggravating factors, including "[u]se, threatened use or possession of a deadly weapon or dangerous instrument." Ruelas did not point out the state's error in his own sentencing memorandum, but instead argued why the presence of a deadly weapon was not a proper aggravating factor.

¶6 At sentencing, the trial court determined Ruelas was a category three repetitive offender with two or more historical prior felony convictions and further found, without objection, the following aggravating factors: "except for the misconduct with weapons counts, I do find the use of [a] deadly weapon during commission," in addition to the pecuniary value factor and the "overall" level of violence and criminal behavior exhibited. The court also found the aggravating factors outweighed the mitigating factors. The court sentenced Ruelas, as previously noted, and Ruelas filed a notice of appeal. Shortly thereafter, he filed a motion to modify his sentences, arguing in relevant part, that the use of the deadly weapon aggravator was improper. The court denied that motion in November 2016.

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<sup>2</sup> The trial court imposed concurrent, rather than consecutive, sentences for counts one and two.

### Deadly Weapon Aggravator

¶7 On review, Ruelas argues the trial court abused its discretion by determining in its Rule 32 ruling below that the use of a deadly weapon as an aggravating factor was harmless error. In its ruling, the court initially noted that although there were sufficient aggravating factors even without the deadly weapon aggravator to make the sentences legal, “that does not mean that the improperly used factor did not persuade Judge Fields [the sentencing judge] to give a higher sentence than he otherwise would have without consideration of that factor.” However, the court then quoted portions of Judge Fields’s ruling denying Ruelas’s motion to modify his sentences. In that ruling, Judge Fields noted that Ruelas’s sentences were proper, regardless of his finding of the deadly weapon aggravator. Judge Fields stated, “In light of the Court’s goal in sentencing it is of no moment that the sentencing minute entry refers to the aggravating circumstances under each charge as the factors ‘listed on page one’ [use of deadly weapon, pecuniary value, and overall level of violence and criminal behavior]; no amount of re-weighing is going to get the Defendant a more favorable sentence.” See *State v. Martinez*, 210 Ariz. 578, ¶ 26 (2005) (once statutory aggravating factor is found, court may find additional aggravating circumstances). Importantly, the court also noted that Judge Fields stated, “the sentence is appropriate no matter how the cards are shuffled.”

¶8 The trial court further explained, “Given the fact that the use of the deadly weapon aggravator did not affect the sentencing range of the Defendant as well as the fact that Judge Fields stated that the aggravator did not affect his final sentence, the error if any was harmless and did not prejudice the Defendant.” The court thus denied Ruelas’s related claim of ineffective assistance of trial and appellate counsel, stating that neither attorney’s performance fell below an objective standard of reasonableness and added, “Given the Court[’s] ruling above, both counsel[] acted appropriately. The sentence imposed was not illegal and Judge Fields made it abundantly clear that the additional aggravating factor did not and would not have made a difference in the Defendant’s sentencing.”<sup>3</sup>

¶9 We initially note that, insofar as Ruelas contends Judge Fields found the deadly weapon aggravator had *not* been proven, the record does not support his assertion; rather, Judge Fields initially stated he was not “inclined” to find the presence of a deadly weapon as an aggravating factor.

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<sup>3</sup>Because Ruelas appears to have abandoned his claims of ineffective assistance on review, we do not address them further.

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Relying on *State v. Grier*, 146 Ariz. 511 (1985), Ruelas argues his due process right to a fair sentence was violated when the sentencing court relied on “false and inaccurate” information at sentencing and asserts that the court improperly found the error harmless. He contends he is entitled to be resentenced without consideration of the deadly weapon aggravator.

¶10 “Convicted defendants have a due process right to a fair sentencing procedure which includes the right to be sentenced on the basis of accurate information.” *Id.* at 515; see *State v. Conn*, 137 Ariz. 148, 150 (1983) (“sentencing process . . . must satisfy the requirements of the Due Process Clause”). To have a sentence set aside, the defendant must show: “(1) that the information before the sentencing court was false or misleading and, (2) that the court relied on the false information in passing sentence.” *Grier*, 146 Ariz. at 515. Here, as we previously noted, Judge Fields concluded he would have imposed the same sentence “no matter how the cards are shuffled.” There is simply no support in the record suggesting the sentencing court would have imposed a different sentence absent the deadly weapon factor. At most, harmless error occurred. Consequently, no relief is warranted in these circumstances.

**Disposition**

¶11 We grant review but deny relief.