

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK  
AUG 12 2010  
COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0151-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
PHILIP JOHN CORTEZ,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083868

Honorable Michael J. Cruikshank, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney General  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Philip Cortez

Tucson  
In Propria Persona

VÁ S Q U E Z, Presiding Judge.

¶1 Petitioner Philip Cortez challenges the trial court’s summary dismissal of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review and, for the following reasons, deny relief.

¶2 Cortez was convicted of attempted armed robbery of a dangerous nature after pleading guilty to that charge. The trial court sentenced him to an aggravated term of fifteen years' imprisonment, to be served concurrently with other sentences imposed by the court in a separate proceeding. In a pro se, of-right petition for post-conviction relief, Cortez alleged the court had erred in sentencing him to an aggravated prison term. He also claimed his trial and Rule 32 counsel had rendered ineffective assistance because they had failed to challenge the allegedly illegal sentence. The court summarily dismissed Cortez's petition, and this petition for review followed.

¶3 On review, Cortez relies on the same arguments he raised below. We will not disturb a trial court's summary denial of post-conviction relief absent an abuse of the court's discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). Cortez has not sustained his burden of establishing such an abuse of discretion here.

¶4 In its well-reasoned minute entry, the trial court identified and correctly resolved most of Cortez's claims of sentencing error in a manner permitting our full review. We need not repeat the court's reasoning here; instead, we adopt it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶5 Although the trial court omitted discussion of one claim Cortez had suggested in his petition for post-conviction relief, this does not alter our determination that the court correctly dismissed his petition. Because Cortez repeats this allegation in his petition for review, we address why this claim, like the others he raised, was subject to dismissal.

¶6 According to Cortez, the trial court erred in considering the dangerous nature of his offense "as an aggravating [factor at sentencing] when dangerousness is an element of the offense" of attempted armed robbery. First, the only aggravating factors

the court found at sentencing were Cortez’s prior convictions. Second, Cortez had agreed to the designation of his offense as dangerous, and the court relied on this designation to enhance Cortez’s sentence pursuant to A.R.S. § 13-704(A).<sup>1</sup> Within the range of sentences authorized by that statute, the court imposed an aggravated term based on Cortez’s prior felony convictions. *See* A.R.S. § 13-701(D)(11). There was no error in this application of sentencing law. Finally, Cortez is mistaken that dangerousness is an element of the offense of attempted armed robbery or inherent in that offense. *See State v. Joyner*, 215 Ariz. 134, ¶ 10, 158 P.3d 263, 267 (App. 2007) (use of deadly weapon or dangerous instrument not established by conviction for armed robbery).

¶7 The trial court correctly concluded Cortez failed to state a colorable claim for Rule 32 relief, and it did not abuse its discretion in summarily dismissing his petition. Accordingly, we grant review, but deny relief.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

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<sup>1</sup>The Arizona criminal sentencing code has been renumbered, effective “from and after December 31, 2008.” *See* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120. For ease of reference and because no changes in the statutes are material to the issues in this case, we refer in this decision to the current section numbers rather than those in effect at the time of the offense in this case.