

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

SEP 30 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0152-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
AMMAR DEAN HALLOUM,	)	the Supreme Court
	)	
Petitioner.	)	
	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20072618

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

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Terry Goddard, Arizona Attorney General  
By Gabriel J. Chin

Tucson  
Attorneys for Respondent

Ammar Dean Halloum

Florence  
In Propria Persona

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ESPINOSA, Judge.

¶1 Pursuant to a plea agreement, Ammar Halloum was convicted of theft by financial exploitation of a vulnerable adult and fraudulent scheme and artifice. The trial court sentenced him to a presumptive prison term of 2.5 years for the theft conviction, to be followed by a seven-year term of probation for the fraudulent scheme and artifice

conviction. In imposing sentence, the court stated it had considered, as aggravating circumstances, “that the offense was carried out for pecuniary gain; the impact on the victim; the age of the victim; and the fact that [Halloum had been] in a fiduciary relationship with the victim” and, as mitigating circumstances, Halloum’s remorse and acceptance of responsibility.

¶2 In an of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., Halloum argued his sentences were illegal because the trial court had considered aggravating factors that were essential elements of his offenses. The court found Halloum had failed to state a colorable claim and summarily denied relief. This petition for review followed.

¶3 On review, Halloum asserts the same arguments he raised below. He contends the court “illegally aggravated” his sentence “to [a] presumptive” term of imprisonment and imposed a maximum term of probation, when it should have imposed “substantial[ly] mitigated or minimum” terms. We will not disturb a trial court’s summary denial of post-conviction relief unless the court has abused its discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find no such abuse here.

¶4 As the trial court stated in its ruling, Halloum was not sentenced to an aggravated prison term, and nothing precludes a court from “consider[ing] the circumstances of an offense to nullify purported mitigation and impose a presumptive term.” *See* A.R.S. § 13-701(F)<sup>1</sup> (in determining sentence, “court shall take into account

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

the amount of aggravating circumstances and whether the amount of mitigating circumstances is sufficiently substantial to justify the lesser term”); *State v. Olmstead*, 213 Ariz. 534, ¶ 5, 145 P.3d 631, 632 (App. 2006) (“[E]ven when only mitigating factors are found, the presumptive term remains the presumptive term unless the court, in its discretion, determines that the amount and nature of the mitigating circumstances justifies a lesser term.”).

¶5 Moreover, the aggravating circumstances found by the trial court here are among those specifically identified in § 13-701(D). *See* § 13-701(D)(6) (pecuniary gain), (9) (physical, emotional, financial harm to victim), (13) (victim sixty-five or older), (14) (fiduciary relationship). A court may consider such factors in aggravation, even if they are also elements of the underlying offense. *State v. Tschilar*, 200 Ariz. 427, ¶ 33, 27 P.3d 331, 339 (App. 2001); *see also State v. Lee*, 189 Ariz. 608, 620, 944 P.2d 1222, 1234 (1997) (“The legislature may establish a sentencing scheme in which an element of a crime could also be used for enhancement and aggravation purposes.”).

¶6 The trial court did not abuse its discretion in finding Halloum had failed to state a colorable claim. Accordingly, we grant review, but deny relief.

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.  
J. WILLIAM BRAMMER, JR., Presiding Judge