

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

NOV -4 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0236-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
MICHAEL PAUL KECK,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20051962

Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Isabel G. Garcia, Pima County Legal Defender
By Robb P. Holmes

Tucson
Attorneys for Petitioner

B R A M M E R, Presiding Judge.

¶1 Petitioner Michael Keck seeks review of the trial court's June 11, 2010, order denying his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 In 2005, Keck pleaded guilty to second-degree burglary and theft. The trial court sentenced him to a 1.5-year prison term for theft but suspended the imposition of sentence on the burglary charge and placed him on a five-year term of probation. The state filed petitions to revoke Keck's probation both in 2006 and 2008 based, inter alia, on his use of illegal drugs in violation of his probation terms. In each instance, after Keck admitted using illegal drugs, the court continued him on probation.

¶3 In April 2009, the state filed a third petition to revoke Keck's probation, asserting he had tested positive for cocaine, failed to submit to drug testing, failed to attend substance abuse counseling, and failed to appear for a scheduled review hearing. Keck admitted he had failed to submit to drug testing on two occasions, and the trial court revoked his probation and sentenced him to a 3.5-year prison term for burglary, finding the balance of aggravating and mitigating factors warranted the presumptive prison term. The court found as aggravating factors Keck's prior criminal history, that this was the third time a petition to revoke his probation had been filed, and that he had absconded from probation. It further determined Keck's efforts to pay restitution owed and his completion of a ninety-day treatment program were mitigating factors.

¶4 Keck then filed a petition for post-conviction relief, asserting the trial court had erred in finding his repeated probation violations to be an aggravating sentencing factor, relying on *State v. Baum*, 182 Ariz. 138, 893 P.2d 1301 (App. 1996). The court rejected that argument, finding *Baum* distinguishable, noting it could rely on Keck's probation violations as an aggravating factor because they demonstrated Keck had failed

to avail himself of the opportunity to reform, and stating it also had considered other factors in determining Keck's sentence.

¶5 Although Keck argues on review that the trial court erred in finding *Baum* distinguishable, relying on Keck's prior probation violations in aggravating his sentence, and determining it had conducted an adequate investigation before sentencing him, we disagree. The court correctly addressed Keck's claims in a thorough and well-reasoned minute entry, and we therefore adopt its ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when court correctly identifies and rules on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court[']s rehashing the trial court's correct ruling in a written decision").

¶6 Although we grant Keck's petition for review, we deny relief.

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

CONCURRING:

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

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