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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA,<br><br>Respondent,<br><br>v.<br><br>DANIEL JESUS CHAVEZ,<br><br>Petitioner. | 2 CA-CR 2010-0242-PR<br>DEPARTMENT A<br><br>MEMORANDUM DECISION<br>Not for Publication<br>Rule 111, Rules of<br>the Supreme Court |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20062812

Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

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Daniel Chavez

Douglas
In Propria Persona

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B R A M M E R, Presiding Judge.

**¶1** Petitioner Daniel Chavez seeks review of the trial court's June 23, 2010, order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling unless it clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

**¶2** Pursuant to Rule 11, Ariz. R. Crim. P., the trial court found Chavez incompetent to stand trial and committed him to the Arizona State Hospital to undergo treatment to restore his competency. After Chavez was evaluated by other psychiatrists, however, the court determined he was competent to stand trial. Chavez then entered into a plea agreement. Pursuant to that agreement, Chavez was convicted of second-degree murder. The court sentenced him to an aggravated, twenty-two-year prison term.

**¶3** Chavez filed a notice of post-conviction relief, and appointed counsel filed a notice of review pursuant to *Montgomery v. Sheldon*, 181 Ariz. 256, 889 P.2d 614 (1995), stating he had found "no legal issues of merit." *See also* Ariz. R. Crim. P. 32.4(c)(2). Chavez subsequently filed a pro se petition, arguing his competency had not been "thoroughly examined prior to sentencing" and that his "competency is in doubt requiring the criminal process to commence anew." He additionally asserted trial counsel had been ineffective for failing to explain adequately the "ramifications" of his plea agreement and by failing to make the trial court aware of the "severity of [his] mental health [problems]." The court found "that no material issue of fact or law exists that would permit post[-]conviction relief," and summarily dismissed Chavez's petition.

**¶4** On review, Chavez first argues that in dismissing his petition for post-conviction relief, the trial court erred by "fail[ing] to address" the psychological evaluations Chavez had attached to his petition. As we understand this argument, Chavez essentially asserts the court had erred in finding him competent because the initial Rule 11 report stated he was not competent and a later report stated an accurate diagnosis was impossible. We first observe that, by pleading guilty, Chavez has waived all non-jurisdictional defects unrelated to the voluntariness of his guilty plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). But an incompetent defendant

cannot voluntarily, knowingly, and intelligently enter a guilty plea. *See* Ariz. R. Crim. P. 11.1; *Bishop v. Superior Court*, 150 Ariz. 404, 406, 724 P.2d 23, 25 (1986); *State v. Soto*, 223 Ariz. 407, ¶ 10, 224 P.3d 223, 226 (App. 2010). Thus, insofar as it relates to his competency to enter a guilty plea, we address Chavez's argument.[1]

**¶5** We will affirm the trial court's competency determination if it is based on reasonable evidence. *State v. Glassel*, 211 Ariz. 33, ¶ 27, 116 P.3d 1193, 1204 (2005). The Rule 11 report stating an accurate diagnosis was impossible based that determination on the evaluator's conclusion Chavez was feigning some or all of his symptoms. In another report, which Chavez does not address, a different evaluator concluded Chavez was feigning his symptoms and was competent to stand trial. In determining whether a defendant is competent, a court is not bound by the opinions of mental health experts—the court determines "both fact and law," and may base its decision on the court's "own observations of the defendant." *Bishop*, 150 Ariz. at 409, 724 P.2d at 28. Thus, to the extent Chavez's Rule 11 evaluations conflicted, the court could adopt those reports in whole or in part in making its determination. *See State v. Lara*, 179 Ariz. 578, 581, 880 P.2d 1124, 1127 (App. 1994), *vacated in part on other grounds by State v. Lara*, 183 Ariz. 233, 902 P.2d 1337 (1995). The reports plainly were sufficient to support the court's finding that Chavez was competent. Thus, Chavez has not demonstrated that the court erred by finding him competent or that it abused its discretion by rejecting this argument in dismissing his petition for post-conviction relief.

[1]We recognize that "[c]ompetence to enter a plea of guilty must be determined by a higher standard than competence to stand trial." *State v. Anzivino*, 148 Ariz. 593, 596, 716 P.2d 50, 53 (App. 1985). Chavez does not argue he was competent to stand trial but incompetent to plead guilty. Accordingly, we need not address any distinction in the two standards.

**¶6** Although Chavez again asserts on review that his trial counsel was ineffective in failing to inform him of the consequences of the plea agreement and in "failing to investigate the possible abuse and mental retardation of his client," he does not explain in his petition how the trial court erred in rejecting these arguments. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review shall contain "the reasons why the petition should be granted" and "specific references to the record"). We therefore do not address these claims further. *See State v. Moody*, 208 Ariz. 424, n.9, 94 P.3d 1119, 1147 n.9 (2004) ("[m]erely mentioning an argument is not enough"; failure to argue claim constitutes abandonment on appeal).

**¶7** Chavez also reiterates his claim of ineffective assistance of counsel, arguing trial counsel was ineffective because he did not "address the psychological evaluations that claim [Chavez] was 'feigning' his problems" and should have argued "at sentencing" that the evaluations did not state explicitly he had been "returned to competency." Chavez does not explain, however, what purpose would have been served had his trial counsel done so. But, to the extent Chavez asserts he would have received a lesser prison term, the trial court correctly rejected this claim in a thorough and well-reasoned minute entry.[2] No purpose would be served by restating the court's analysis here. *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").

[2]Relying on *Wiggins v. Smith*, 539 U.S. 510 (2003), Chavez asserts the trial court's analysis of this issue "f[ell] short" because a federal court would review the claim de novo. Nothing in *Wiggins* suggests the court's analysis was deficient here.

**¶8** Insofar as Chavez asserts his trial counsel was ineffective for failing to request a new competency determination at sentencing, he did not raise this argument in his petition for post-conviction relief. This court will not consider for the first time on review issues neither presented to nor ruled on by the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Rule 32.9(c)(1)(ii) (petition for review shall contain "[t]he issues which were decided by the trial court . . . which the defendant wishes to present" for review).

**¶9** For the reasons stated, although we grant Chavez'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