

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.

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0366-PR
)	DEPARTMENT A
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
OLSIE COLSTON, III,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20021096

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Olsie Colston, III

Hinton, OK
In Propria Persona

H O W A R D, Presiding Judge.

¶1 In 2002, a jury found petitioner Olsie Colston guilty of one count of sale of a narcotic drug. He subsequently pled guilty to an unrelated count of theft of a credit card. Finding Colston had two historical prior felony convictions, the trial court sentenced him to a substantially mitigated, enhanced, 10.5-year prison term on the drug conviction and to a concurrent, presumptive, 2.25-year prison term on the theft conviction. We affirmed Colston’s drug conviction and sentence on appeal. *State v. Colston*, No. 2 CA-CR 2002-0489 (memorandum decision filed Mar. 1, 2005). We denied relief on Colston’s petition for review of the trial court’s denial of post-conviction relief on the first petition for post-conviction relief he filed pursuant to Rule 32, Ariz. R. Crim. P. *State v. Colston*, No. 2 CA-CR 2007-0384-PR (memorandum decision filed June 4, 2008). This petition for review followed the trial court’s denial of relief on Colston’s second petition for post-conviction relief, filed in propria persona. We will not disturb a trial court’s ruling on a petition for post-conviction relief absent an abuse of discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We find no abuse here.

¶2 Colston argues, as he did in the petition he filed below, that he would have received a “less[]severe” sentence if the trial court had applied the “lesser included sentencing guideline range” pursuant to A.R.S. §§ 13-702.02(B)(4) or 13-3419(A)(2) rather than § 13-702.01(F). He asks us to vacate his sentence and remand this matter for resentencing. The trial court denied post-conviction relief in a minute entry order that clearly identified Colston’s argument and correctly ruled on it in a manner that will allow this court

and any future court to understand its resolution. We therefore adopt the trial court's ruling and see no need to revisit it. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 Because we conclude the trial court did not abuse its discretion by dismissing Colston's petition for post-conviction relief, we grant the petition for review but deny relief.

JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

JOHN PELANDER, Chief Judge

PHILIP G. ESPINOSA, Judge