

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JOHN JAY HELIE,  
*Petitioner.*

No. 2 CA-CR 2016-0178-PR  
Filed October 4, 2016

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Yavapai County  
No. V1300CR201180415  
The Honorable Michael R. Bluff, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney  
By Bill R. Hughes, Deputy County Attorney, Prescott  
*Counsel for Respondent*

John Jay Helie, Phoenix  
*In Propria Persona*

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**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Vásquez and Judge Howard concurred.

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ECKERSTROM, Chief Judge:

¶1 Petitioner John Helie pled guilty to the following charges in the indictment: transportation of two pounds or more of marijuana for sale and possession of drug paraphernalia. After a bench trial on sentencing factors, the trial court sentenced Helie to enhanced, concurrent prison terms of eight and three years. He appealed from the sentences and this court affirmed. *State v. Helie*, No. 1 CA-CR 13-0084 (Ariz. App. Oct. 31, 2013) (mem. decision).

¶2 Helie now seeks review of the trial court's order denying his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb the court's ruling absent a clear abuse of discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Helie has not sustained his burden of establishing such abuse.

¶3 In his Rule 32 petition, Helie argued counsel had been ineffective in two respects. First, he asserted counsel failed to present evidence that would have shown Helie was not on felony release from a Texas offense when he committed the instant crimes, arguing his sentences were erroneously enhanced pursuant to A.R.S. § 13-708(D). The trial court rejected that claim, determining that the evidence presented at the bench trial had supported its finding that he was on release at the time of the offense and that the evidence counsel purportedly should have presented did not change the propriety of that ruling.

¶4 Second, Helie asserted in his Rule 32 petition that at the Early Disposition Court, trial counsel had communicated the terms of the state's plea offer to him but did not tell him the offer would be

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withdrawn if he did not accept it that day. Helie asserted he would have accepted the offer had he known this. The court found this claim was colorable, and set the matter for an evidentiary hearing, at which Helie and his counsel testified. The court denied relief after the hearing, finding Helie was not credible.

¶5 In his petition for review, Helie asks this court to review the following issues: “illegal search [and] seizure”; “malicious sentencing”; misconduct by the prosecutor, law enforcement officers, and trial counsel; “no amount of marij[ua]na was ever legal[l]y determined”; sentencing error based on the prosecutor’s false assertion that he had prior felony convictions; and, ineffective assistance of counsel in connection with the plea proceeding based on counsel’s failure to tell him the initial offer would expire the same day the state had offered it. We will not address the claims he raises for the first time on review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).<sup>1</sup>

¶6 Helie has not established how the trial court abused its discretion in the two well-reasoned rulings that it entered in this post-conviction proceeding. No purpose would be served by restating those rulings in their entirety here. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (1993). Rather, we adopt them because the record supports them. *See Swoopes*, 216 Ariz. 390, ¶ 47, 166 P.3d at 959. Additionally, with respect to the second claim of ineffective assistance of counsel, the court determined Helie was not credible. We defer to the trial court in assessing the credibility of witnesses at an evidentiary hearing in a post-conviction relief proceeding. *See State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988).

¶7 The petition for review is granted but relief is denied.

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<sup>1</sup>Moreover, by entering the guilty pleas, Helie waived all non-jurisdictional defects and errors prior to the pleas, including the deprivation of constitutional rights. *See State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 708-09 (App. 2008).