

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

APR 24 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0048-PR
	)	DEPARTMENT A
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
TYSON JOSEPH HILAND,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF YAVAPAI COUNTY

Cause No. P1300CR20070899

Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

Sheila S. Polk, Yavapai County Attorney  
By Sheila S. Polk

Prescott  
Attorneys for Respondent

David Goldberg

Fort Collins, CO  
Attorney for Petitioner

MILLER, Judge.

¶1 Pursuant to a 2008 plea agreement, petitioner Tyson Hiland was convicted of theft and fraudulent schemes. The trial court sentenced Hiland to an aggravated, ten-year prison term, to be followed by a seven-year probationary term upon his release from

prison. Hiland then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The court summarily dismissed Hiland’s petition and this petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 On review, Hiland contends the trial court abused its discretion by denying post-conviction relief based on the following claims: the court failed to adequately analyze the “package” plea agreement pursuant to *State v. Solano*, 150 Ariz. 398, 402, 724 P.2d 17, 21 (1986); trial counsel was ineffective based on “off the record” advice he gave Hiland regarding “the likely outcome” if he pled guilty; the court illegally imposed consecutive sentences, which were unreasonably disproportionate to the other defendants’ sentences and failed to consider the “overwhelming” mitigating evidence; and, the trial judge, who was not the same as the Rule 32 judge, created the appearance of impropriety as evidenced by the presence of a letter sent to the judge by a detective who had testified in this case. Hiland also asserts he was entitled to an evidentiary hearing.

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Hiland’s petition for post-conviction relief. The court denied relief as to three of the four defendants, including Hiland, in a twelve-page, detailed and thorough ruling that clearly identified his arguments, followed by a supplemental order that specifically addressed Hiland’s claim of ineffective assistance of counsel, and the court correctly ruled on the claims in a manner that will allow this court and any court in the future to understand their resolution. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We therefore approve and adopt the court’s rulings and see no need to restate them here. *See id.*

¶4 Additionally, relying on *Hurles v. Ryan*, 650 F.3d 1301 (9th Cir. 2011), Hiland argues for the first time in his reply to the state’s response to the petition for review that this court should not afford “any deference on review” to the Rule 32 judge’s ruling based on “the factual dispute between the affidavits submitted by Petitioner and the cold record.” Because Hiland failed to cite *Hurles* in his petition for review, giving the state the opportunity to respond accordingly, we decline to address this argument. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review).<sup>1</sup>

¶5 Accordingly, we grant the petition for review but deny relief.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge\*

\*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed December 12, 2012.

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<sup>1</sup>Moreover, after Hiland submitted his reply to the petition for review in which he cited *Hurles*, the United States Court of Appeals withdrew that opinion and superseded it with a new one. *Hurles v. Ryan*, 706 F.3d 1021 (9th Cir. 2013).