

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

PATRICK FRANCIS CHORPENNING SR.,  
*Petitioner.*

No. 2 CA-CR 2013-0424-PR  
Filed January 14, 2014

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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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Maricopa County

No. CR2009007846001DT

The Honorable Susan M. Brnovich, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Patrick F. Chorpenning Sr., Peoria  
*In Propria Persona*

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MEMORANDUM DECISION

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

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M I L L E R, Judge:

¶1 Pursuant to a plea agreement, petitioner Patrick Chorpenning Sr. was convicted of conflict of interest of a public officer or employee of a public agency in violation of A.R.S. § 38-503, and solicitation to commit a violation of a procurement code, in violation of, inter alia, A.R.S. § 41-2616. The trial court suspended the imposition of sentence and ordered Chorpenning to serve concurrent, two-year terms of probation. In this petition for review, Chorpenning challenges the court's denial of relief on claims he raised in this post-conviction proceeding. 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).

¶2 Chorpenning was the director of the Arizona Department of Veterans' Services (ADVS). In November 2009, he was charged by indictment with eight felonies related to misuse of his position in a variety of respects from 2004 to 2007: procuring employment for his son and his wife and contracts or a position in which he and his son had a substantial interest; falsifying or concealing information or misleading others with respect to his son's employment with ADVS; misusing public funds by appropriating almost \$39,000 to the ADVS Employee Recognition Fund and about \$85,000 to the use of a private company for an alleged entity called Military Veterans for America; and, contracting for purchase of or purchasing materials, services or construction from that private company in the amount of \$382,757, in violation of the Arizona Procurement Code (APC).

¶3 Chorpenning filed a motion pursuant to Rule 12.9, Ariz. R. Crim. P., to remand the case to the grand jury for a

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redetermination of probable cause, which the trial court denied. Thereafter, in September 2010, Chorpenning pled guilty pursuant to a plea agreement to one count of conflict of interest, a class six, designated felony, and an amended count of solicitation to commit a violation of the APC, a class six undesignated offense.

¶4 In his June 2011 pro se petition for post-conviction relief, Chorpenning asserted the grand jury proceeding had been flawed and the trial court had erred in denying the motion for redetermination of probable cause. Additionally, he maintained he was entitled to relief pursuant to Rule 32.1(e), based on newly discovered evidence, relying in part on two reports dated July 2, 2007, and March 29, 2007, by Michael Edwards of the Special Investigations Section of the Office of the Arizona Attorney General, attaching the reports to the petition. He also asserted there was new information regarding allegedly unethical conduct by Tim Nelson, the Governor's lead counsel, some of which was based on Nelson's alleged conflict of interest. Chorpenning also raised a claim based on a significant change in the law pursuant to Rule 32.1(g), Ariz. R. Crim. P., asserting the legislature had amended A.R.S. § 41-608, which relates to the ADVS director's authority to make decisions regarding the donation of funds to organizations benefitting veterans. Finally, Chorpenning maintained there was clear and convincing evidence that "the facts underlying this claim would be sufficient to establish that no reasonable fact-finder would have found the defendant guilty." See Ariz. R. Crim. P. 32.1(h).

¶5 Thereafter, appointed counsel filed a notice stating he had reviewed the record and had found no claims to raise in the post-conviction proceeding. Chorpenning subsequently filed a second pro se petition or supplemental petition in April 2012 in which he asserted his convictions were obtained through "fraud" and "duress . . . carried out by a small cabal of rogue attorneys who acted nefariously and disingenuously" and contrary "to the Lawyer's Oath." He essentially maintained he had entered into the plea agreement because of pressure placed on him and fraud perpetrated by his own attorney and attorneys within the office of the Arizona Attorney General, insisting there was insufficient evidence to support the convictions.

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¶6 In its August 2012 minute entry, the trial court first identified the claims Chorpenning had raised as follows: a denial of his due process rights with respect to the grand jury proceedings, newly discovered evidence under Rule 32.1(e), significant change in the law, under Rule 32.1(g), and actual innocence, pursuant to Rule 32.1(h). The court concluded the challenge to the grand jury proceeding had been waived by Chorpenning's entry of his plea. The court rejected the claim of newly discovered evidence, finding the evidence Chorpenning referred to had existed before "trial," presumably referring to Chorpenning's entry of the guilty pleas, and was known to Chorpenning and his attorney. The court added, "Defendant raised these issues in . . . memorand[a] to the attorney general's office and at the settlement conference. It was in light of all of this information that defendant made the decision to accept the plea agreement."

¶7 The trial court also rejected Chorpenning's claim that there had been a significant change in the law on the ground that Chorpenning "cites to a 2009 amendment to the law that pre-dates defendant's change of plea" and because he had failed to explain "what is different about the changes to [the statute] that was significant, or how it would have affected his case, or how it affected his decision to enter the plea agreement." Finally, the court rejected the Rule 32.1(h) claim, finding Chorpenning had not sustained his burden under that subsection of the rule.

¶8 In his pro se petition for review, Chorpenning contends the trial court failed to address the following claims that he raised in the post-conviction proceeding: "fraud on the court"; "[w]ithholding or concealing exculpatory and material facts from the hearing judge"; "unlawful duress"; "issue of new statute before sentencing"; and, his request for an evidentiary hearing. He argues that he was deprived of an opportunity to be heard for this reason and because the court did not conduct an evidentiary hearing; he asserts the court's finding that he had not sustained his burden of

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proving grounds for relief is “ludicrous.”<sup>1</sup> In addition, Chorpenning reurges his claim that the amendment of § 41-608 resulted in a significant change in the law; he concedes, however, that portion of the statute that is material to his claim existed before the statute was amended and the legislature retained it in the amended version.

¶19 First, we reject Chorpenning’s argument that he was deprived of an opportunity to be heard in this proceeding. The trial court correctly identified the claims as they were cognizable under Rule 32.1. That Chorpenning had elaborated on his various claims in the two pro se petitions and that the court did not identify each and every claim and argument or sub-issue before denying Chorpenning’s request for relief does not mean the court did not consider the petitions fully. We presume the court reviewed and considered the arguments before it in the memoranda Chorpenning filed. See *Flynn v. Cornoyer-Hedrick Architects & Planners, Inc.*, 160 Ariz. 187, 193, 772 P.2d 10, 16 (App. 1988) (rejecting claim that court had not read reply to response to motion, despite absence in minute entry of express statement by court it had done so); cf. *Occidental Chem. Co. v. Connor*, 124 Ariz. 341, 344, 604 P.2d 605, 608 (1979) (appellate court presumes trial court considered affidavits that were part of record when it ruled on motion); *State v. Everhart*, 169 Ariz. 404, 407, 819 P.2d 990, 993 (App. 1991) (rejecting defendant’s claim trial court erred in failing to expressly state it had considered evidence in mitigation and presuming court had considered all relevant factors before it, including evidence in mitigation). Thus, we presume the court considered all of the claims and arguments Chorpenning made in this proceeding. Moreover, before identifying the claims Chorpenning had raised, the court stated in its minute entry that it had reviewed Chorpenning’s Rule 32 petition, the state’s response, and the record. And although the court did not specify every elaboration Chorpenning had made or sub-issues he

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<sup>1</sup> Chorpenning reads procedural orders, which include the finding “good cause appearing,” to be the equivalent of a substantive ruling on the merits. The “good cause” finding pertains only to the procedural issue in the particular order.

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had raised, those elaborations and sub-issues were within the parameters of the claims the court had specifically identified.

¶10 We also reject Chorpenning's related argument that he was deprived of the opportunity to be heard simply because he was not afforded an evidentiary hearing. Chorpenning was only entitled to an evidentiary hearing if he had raised a colorable claim for relief. *See State v. Donald*, 198 Ariz. 406, ¶ 8, 10 P.3d 1193, 1198 (App. 2000) (defendant only entitled to evidentiary hearing on colorable claim); *see also* Ariz. R. Crim. P. 32.6(c) (providing for summary dismissal when defendant failed to raise material issue of fact or law). And the trial court expressly found at the end of the minute entry ruling that he had not raised any colorable claims. Chorpenning has not persuaded us that the court abused its discretion in reaching this conclusion. Finally, on review Chorpenning seems to be suggesting, as he did below, that he had many defenses to the charges and for this reason there was no evidence to support his convictions. Those defenses, like all non-jurisdictional claims, were waived by Chorpenning's entry of the plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Thus, the court did not err in expressly or implicitly rejecting this claim.

¶11 We note, finally, that the transcript from the change-of-plea proceeding establishes that among the questions the trial court asked Chorpenning, who has a master's degree, is whether he had reviewed and understood the plea agreement, and whether anyone had "forced [him] or threatened [him] in any way to get [him] to plead guilty." Chorpenning assured the court he understood the agreement and responded negatively to the question about force or threats. Additionally, defense counsel provided the factual bases for the counts to which Chorpenning would be pleading and the court asked Chorpenning whether he agreed with what counsel had said. Chorpenning told the court he did. The court had the right to rely on the representations Chorpenning made during the change-of-plea proceeding and his failure at sentencing to raise any potential issue regarding the validity of the pleas. Both Chorpenning and defense counsel asserted at sentencing that Chorpenning never intended to benefit by his acts and did not harm veterans, insisting that all he had done was, in counsel's words, unknowingly violated "obscure

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Arizona statutes.” But at no time did either suggest the pleas were the result of fraud, force, or coercion or that there was an insufficient factual basis for the pleas. Indeed, counsel stated that Chorpenning understood he had violated Arizona law.

¶12 For the reasons stated we grant the petition for review but deny relief.