

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ISAAC CONTRERAS,
Petitioner.

No. 2 CA-CR 2013-0478-PR
Filed April 7, 2014

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Pima County
No. CR20110223001
The Honorable Scott Rash, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Isaac Contreras, Florence
In Propria Persona

STATE v. CONTRERAS
Decision of the Court

MEMORANDUM DECISION

Chief Judge Howard authored the decision of the Court, in which Judge Miller and Judge Brammer¹ concurred.

H O W A R D, Chief Judge:

¶1 Petitioner Isaac Contreras seeks review of the trial court's summary denial, in part, of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review but, for the following reasons, deny relief.

¶2 Pursuant to a plea agreement, Contreras was convicted in March 2012 of aggravated assault of a minor under fifteen years of age, committed for sexual gratification, and "sexual conduct with a minor under fifteen in the second degree, a preparatory dangerous crime against children."² The trial court suspended the imposition of sentence and placed Contreras on probation for one year for the aggravated-assault charge and lifetime probation for the sexual-conduct charge.

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

²This identification of the offense appears to be a misnomer that may be clarified, by reference to the statutes cited, as a preparatory offense incident to sexual conduct with a minor, a second-degree dangerous crime against children. See A.R.S. §§ 13-705(O) ("A dangerous crime against children is in the first degree if it is a completed offense and is in the second degree if it is a preparatory offense"), 13-705(P)(1)(e) ("[d]angerous crime against children" includes sexual conduct with minor under fifteen years of age), 13-1405; 2008 Ariz. Sess. Laws, ch. 301, § 58 (no designation of "degrees" of sexual conduct with minor).

STATE v. CONTRERAS
Decision of the Court

¶3 In February 2013, Contreras admitted allegations in a petition to revoke his probation. At the disposition hearing, the state urged the trial court to impose an aggravated sentence; Contreras's counsel asked the court to impose "the least amount of time that [it] deems warranted in the Department of Corrections" and told the court Contreras was "rejecting probation with the knowledge that he's going to go to prison." The court found "probation is not appropriate. In fact, the Defendant has rejected probation." The court also found "the presence of accomplices and the age of the victim" to be aggravating circumstances, and it sentenced Contreras to concurrent prison terms, the longer of which is twelve years.³

¶4 In his petition for post-conviction relief, Contreras argued he was "entitled to a new disposition hearing" because, although the trial court "had the authority to revoke Contreras' probation, the law did not permit it to do so based even in part on Contreras' rejection of probation because he could not reject probation." He relied on *Demarce v. Willrich*, in which this court concluded a defendant who is placed on lifetime probation according to a stipulated disposition in a plea agreement "does not have a right to then reject the lifetime probation and, in its place, elect incarceration for a lesser term." 203 Ariz. 502, ¶ 19, 56 P.3d 76, 80 (App. 2002). He also challenged the court's order reducing "all fines, fees, assessments and/or restitution . . . to a Criminal Restitution Order" (CRO).

¶5 The trial court granted relief by vacating the CRO but denied Contreras's request for a new disposition hearing. This petition for review followed.

¶6 In Contreras's pro se petition for review, he repeats his argument that, in light of *Demarce*, the trial court erred in revoking

³Contreras's plea agreement provided that, if sentenced to prison, he would receive a minimum sentence of five years and a maximum sentence of fifteen years for the sexual-conduct charge.

STATE v. CONTRERAS
Decision of the Court

his probation based, in some part,” on the erroneous belief that [Contreras] could reject probation.” Relying on *State v. Ferrero*, 229 Ariz. 239, 274 P.3d 509 (2012), Contreras also asserts, for the first time, that the court “violated [his] state and [f]ederal constitutional rights by aggravating [his] sentences using uncharged offenses,” without screening such evidence pursuant to Rule 404(c), Ariz. R. Evid.⁴ We do not address this second claim because our review is limited to those “issues . . . decided by the trial court,” Ariz. R. Crim. P. 32.9(c)(1)(ii), and we do not consider issues raised for the first time in a petition for review, *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶7 We review a trial court’s summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here. Instead, the court clearly identified, thoroughly analyzed, and correctly resolved the issues Contreras presented below, and we need not restate that analysis. See *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Because the court correctly ruled on the issues Contreras raised “in a fashion that will allow any court in the future to understand the resolution,” *id.*, we adopt its order. Accordingly, although we grant review, we deny relief.

⁴In *Ferrero*, our supreme court addressed application of the Arizona Rules of Evidence to the admission, at a jury trial, of “propensity evidence in sexual misconduct cases.” 229 Ariz. 239, ¶¶ 6-7, 274 P.3d at 511.