IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MICHAEL COLE BARR,
Petitioner.

No. 2 CA-CR 2014-0012-PR
Filed October 23, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2010148874001SE
The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Catherine Leisch, Deputy County Attorney, Phoenix
Counsel for Respondent

Michael Cole Barr, Florence
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Judge:

¶1 Michael Barr petitions this court for review of the trial court's order summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Barr has not met his burden of demonstrating such abuse here.

¶2 Barr pled guilty to sexual conduct with a minor and two counts of attempted sexual conduct with a minor and was sentenced to a twenty-two-year prison term for sexual conduct with a minor, to be followed by concurrent terms of lifetime probation on the remaining convictions. He filed a notice of post-conviction relief, and the trial court appointed counsel, who filed a notice stating he had reviewed the record but had been "unable to find any claims for relief to raise in post-conviction relief proceedings."

¶3 Barr then filed a pro se petition for post-conviction relief asserting his plea had been involuntary because the judge at the settlement conference coerced him into pleading guilty; the state had failed to disclose evidence in accordance with Rule 15, Ariz. R. Crim. P.; he should have been released because the state did not file a complaint within forty-eight hours of his arrest; and, his counsel had been ineffective for failing to provide him with various materials related to his case. The trial court summarily dismissed Barr's petition.

¶4 On review, Barr argues, for the first time, that he was "on Zoloft and Hydroxyzine" when he entered his plea and that, combined with coercion by the settlement judge, entitled him to withdraw from the plea. We do not address arguments raised for the first time on review and accordingly do not address his claim that the fact he was on medication influenced his decision to plead guilty. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (court of appeals does not address issues raised for first time in petition for review); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review should contain "issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review").

¶5 To the extent Barr separately reurges his claim that the settlement judge coerced him into pleading guilty, we reject that argument. Barr was charged with, inter alia, five counts of sexual conduct with a minor under the age of fifteen, punishable by consecutive prison terms of at least thirteen years per offense. A.R.S. §§ 13-705(C), (M), 13-1405. And it appears the victims were under the age of twelve, and Barr therefore could have faced life sentences on each count. § 13-705(A). Thus, the settlement judge correctly advised him that he likely would die in prison if convicted at trial. We cannot agree with Barr's assertion that the truth about his potential prison sentence is improperly coercive. *See Bordenkircher v. Hayes*, 434 U.S. 357, 364 (1978) ("While confronting a defendant with the risk of more severe punishment clearly may have a 'discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices [is] an inevitable'—and permissible—'attribute of any legitimate system which tolerates and encourages the negotiation of pleas.'"), *quoting Chaffin v. Stynchcombe*, 412 U.S. 17, 31 (1973); *cf. United States v. Bautista–Avila*, 6 F.3d 1360, 1365 (9th Cir. 1993) ("'[R]ecitation of the potential sentence a defendant might receive' does not render a statement involuntary."), *quoting United States v. Paden*, 908 F.2d 1229, 1235 (5th Cir. 1990).

¶6 Barr also restates his claims that the state failed to timely provide discovery and that his counsel was ineffective in failing to provide him with certain information. But, even assuming

Barr is correct, he has not demonstrated that the purportedly missing discovery and information was relevant to his decision to plead guilty. A valid guilty plea waives all non-jurisdictional defects, including ineffective assistance of counsel unrelated to the entry of a guilty plea. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). Accordingly, the trial court did not err in summarily rejecting those claims. And, for the same reason, the court did not err in rejecting Barr's argument that the complaint against him was not timely filed.

¶7 Although we grant review, we deny relief.