

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DEVON E. PHILLIPS,
Petitioner.

No. 2 CA-CR 2014-0070-PR
Filed May 16, 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NOT FOR PUBLICATION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. CR2008162530003DT

The Honorable Roland J. Steinle, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Devon E. Phillips, Tucson
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Devon Phillips seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. “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). Phillips has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Phillips pled guilty to attempted possession of marijuana for sale. The trial court imposed a partially aggravated 5.5-year term of imprisonment. Phillips sought and was denied post-conviction relief. He thereafter filed a petition for a writ of habeas corpus, claiming he was unlawfully imprisoned because he “was never advised of the constitutional rights that were waived by pleading guilty” and his guilty plea was therefore “invalid and illegally obtained.” Treating the petition as one for post-conviction relief, the court summarily dismissed the proceeding, concluding Phillips’s claim was precluded.

¶3 On review, Phillips again claims he is wrongfully imprisoned because the trial court did not advise him of his rights or address him personally as required by Rules 17.2 and 17.3, Ariz. R. Crim. P. He also raises claims of ineffective assistance of counsel. As the trial court properly concluded, however, these claims are precluded in this successive proceeding. *See* Ariz. R. Crim. P. 32.2(a)(2), (3). Nor has Phillips established they are claims that may be raised in an untimely proceeding such as this one. *See* Ariz. R. Crim. P. 32.4(a).

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¶4 In any event, even if not precluded, Phillips's Rule 17 claim is without merit. The transcript of his change of plea hearing plainly shows that the trial court explained the rights he would be waiving in a group advisement at the outset of the hearing. And the court subsequently addressed Phillips personally, explaining, *inter alia*, the possible sentences he would face as a result of his plea, confirming that he had been present for the "group advisement" and did not need any part of it repeated, asking if counsel had explained the plea to him and answered all of his questions. Phillips has cited no authority to suggest that this procedure does not comply with Rule 17.

¶5 Therefore, although we grant the petition for review, we deny relief.