

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MANUEL CONTRERAS-GALDEAN,
Petitioner.

No. 2 CA-CR 2014-0283-PR
Filed September 18, 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NOT FOR PUBLICATION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. CR2008171176001SE
The Honorable Margaret R. Mahoney, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Robert E. Prather, Deputy County Attorney, Phoenix
Counsel for Respondent

Manuel Contreras-Galdean, Winslow
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

E C K E R S T R O M, Chief Judge:

¶1 Manuel Contreras-Galdean 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). Contreras-Galdean has not met his burden of demonstrating such abuse here.

¶2 Contreras-Galdean pled guilty to manslaughter and aggravated assault. The trial court sentenced him to a fourteen-year prison term for manslaughter and, for his conviction of aggravated assault, suspended the imposition of sentence and placed him on a four-year term of probation to begin upon his discharge from prison. His convictions stemmed from a traffic accident in which he had turned into oncoming traffic while making a left turn and collided with another vehicle, injuring the vehicle's two occupants; the passenger in that vehicle died at the hospital from her injuries. Contreras-Galdean had a blood-alcohol content of .192 three hours after the collision.

¶3 Contreras-Galdean filed a notice of post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but had found no claims to raise in a post-conviction relief proceeding. Contreras-Galdean then filed a pro se petition raising several claims. He argued he had been "pressured" to enter the plea agreement and had been informed by counsel that he could withdraw from the plea. And he claimed he should be given a new plea offer or trial because he had complied with A.R.S. § 28-661 by remaining at the scene of the accident and his trial counsel had been ineffective for failing to bring that statute "to the state[']s attention."

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¶4 Contreras-Galdean suggests he should not have been convicted of manslaughter because alleged negligence by emergency response personnel was a superseding cause of the victim's death and because the victim had not been properly wearing a seatbelt. He further asserted a horizontal gaze nystagmus examination had been improperly conducted and thus there had not been probable cause to arrest him for driving under the influence. He also cited A.R.S. §§ 13-115, 13-116, and former A.R.S. § 13-604(M) in support of an argument that he should only be convicted of one offense or that his sentences were required to be concurrent because he had committed the offenses on the same occasion. And he claimed the trial court erred in sentencing him to a term greater than the presumptive "utilizing facts not found by a jury." Finally, Contreras-Galdean argued his counsel should have presented various facts that purportedly suggested he had not caused the accident and it would have occurred even "had alcohol not been present."

¶5 The trial court summarily dismissed the petition, concluding counsel had no reason to refer to § 28-661 because Contreras-Galdean's compliance with that statute was not a defense to his crimes. It further noted that Contreras-Galdean's claim that he had entered the plea only because counsel had told him he could later withdraw from it was unsupported by the record because the court had advised him he would not be permitted to do so "unless he could prove a manifest injustice." And the court rejected Contreras-Galdean's sentencing claims, noting it had sentenced him consistent with the plea agreement and he had waived the right to a jury finding on aggravating factors. Finally, the court rejected Contreras-Galdean's various evidentiary challenges to his convictions, observing he had waived such objections as part of his plea. This petition for review followed.

¶6 On review, Contreras-Galdean restates his claims. He does not, however, identify any error in the trial court's resolution of those claims. We have reviewed the record and are satisfied that, in its order, the court clearly identified and thoroughly addressed the

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majority of Contreras-Galdean's claims and correctly resolved the issues in a manner sufficient to permit this or any other court to conduct a meaningful review. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by repeating the court's ruling in its entirety, and we therefore adopt it. *See id.*

¶7 We note, however, that the trial court did not expressly address Contreras-Galdean's arguments based on §§ 13-115, 13-116, and former § 13-604(M). As we noted above, based on those statutes, Contreras-Galdean appears to assert he should not have been convicted of both aggravated assault and manslaughter or that his probationary term should not follow his prison term because his offenses occurred on the same occasion. These statutes do not afford Contreras-Galdean relief.

¶8 At the time of the offenses, § 13-604(M) provided that "[c]onvictions for two or more offenses committed on the same occasion shall be counted as only one conviction for purposes of this section." 2008 Ariz. Sess. Laws, ch. 24, § 1. But § 13-604 governed sentences for dangerous and repetitive offenders, and subsection (M) affected only the determination of how many previous convictions a particular defendant had for the purpose of imposing an enhanced sentence under that statute. It had no application to Contreras-Galdean, who was sentenced as a non-repetitive offender.

¶9 The reason for Contreras-Galdean's citing § 13-115 is not clear. That statute provides, in relevant part, "When it appears that a defendant has committed a crime or public offense, and there is reasonable ground of doubt in which of two or more degrees he is guilty, he may be convicted of the lowest of such degrees only." § 13-115(B). But Contreras-Galdean pled guilty to the offenses as provided in the plea; thus, there can be no doubt as to which degree of offense he is guilty.

¶10 And § 13-116 is not implicated here. That statute provides that "[a]n act or omission which is made punishable in different ways by different sections of the laws may be punished under both, but in no event may sentences be other than

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concurrent.” But when, as here, a single act harms multiple victims, the perpetrator may be punished by consecutive sentences. *See State v. Hampton*, 213 Ariz. 167, ¶¶ 63-65, 140 P.3d 950, 964-65 (2006).

¶11 Last, Contreras-Galdean claims for the first time on review that he was not “advised . . . of the right to plead not guilty” and that his plea colloquy did not comply with Rule 17.2, Ariz. R. Crim. P. We do not address claims raised for the first time in a petition for review. *See Ariz. R. Crim. P. 32.9(c)(1)(ii); State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶12 For the reasons stated, although we grant review, we deny relief.