

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

CARL DEAN MOSHER II,  
*Petitioner.*

No. 2 CA-CR 2014-0369-PR  
Filed December 5, 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NOT FOR PUBLICATION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. CR2011106523001DT  
The Honorable Daniel G. Martin, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Karen Kemper, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

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Carl Dean Mosher II, Florence  
*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.

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

¶1 Petitioner Carl Mosher II 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). Mosher has failed to establish such abuse here.

¶2 Pursuant to a plea agreement, Mosher was convicted of sexual conduct with a minor and two counts of attempted sexual conduct with a minor. As stipulated in the plea agreement, the trial court imposed an aggravated, twenty-seven year term of imprisonment on the sexual conduct charge and suspended the imposition of sentence on the attempt charges, placing Mosher on concurrent lifetime terms of probation, to commence on his release from prison on the sexual conduct charge.

¶3 Mosher initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was "unable to find any claims for relief to raise in post-conviction relief proceedings." In a supplemental pro se petition, however, Mosher argued that the trial court had committed sentencing error by erroneously considering certain aggravating factors and that he had received ineffective assistance of trial counsel because counsel had improperly advised him to stipulate to an aggravated sentence in view of the erroneously considered aggravating factors. The trial court summarily denied relief.

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¶4 On review Mosher repeats his claims and argues the trial court abused its discretion in summarily dismissing his petition. We conclude, however, that the trial court clearly and correctly identified and addressed Mosher's claims, and we therefore adopt its ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has ruled on issue correctly "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing" that analysis).

¶5 We write further only to emphasize two points. First, the same judge who presided at trial ruled on Mosher's post-conviction petition. Having had the opportunity to reconsider his sentencing decision in the post-conviction context, without the aggravating circumstances of which Mosher complains, the judge nonetheless ratified the sentence he had imposed, and resentencing is therefore not required. *See State v. Ojeda*, 159 Ariz. 560, 562, 769 P.2d 1006, 1008 (1989).

¶6 Second, although Mosher argues his counsel was ineffective in not advising him to negotiate for a presumptive sentence, he has presented nothing to suggest that such a sentence was possible in the context of the plea negotiations. As the state points out, the evidence against Mosher was overwhelming and his plea agreement involved the state dropping one of the counts against him and agreeing to probation on two other counts. In view of the favorable plea agreement and the fact that the trial court's sentencing decision was not altered in the absence of the aggravating factors of which Mosher complains, we cannot say the court abused its discretion in concluding he had not established ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (to establish ineffective assistance petitioner must show counsel's performance was deficient and resulting prejudice).

¶7 Therefore, although we grant the petition for review, relief is denied.