

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RONALD NEAL BABICH,
Petitioner.

No. 2 CA-CR 2014-0377-PR
Filed February 25, 2015

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20123764001

The Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Ronald Neal Babich, San Luis
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.

ECKERSTROM, Chief Judge:

¶1 Ronald Babich seeks review of the trial court's order denying his of-right 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. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Babich has not met his burden of demonstrating such abuse here.

¶2 Babich pled guilty to aggravated assault with a deadly weapon or dangerous instrument and was sentenced to a three-year prison term. He filed a notice of post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but had found no "claims for relief to raise in Rule 32 post-conviction proceedings that [Babich] wished to pursue."

¶3 Babich then filed a pro se petition for post-conviction relief claiming his trial counsel had been ineffective by failing to: (1) "conduct an adequate Rule 11 evaluation"; (2) seek remand to the grand jury for a redetermination of probable cause; (3) argue the evidence was insufficient; and (4) conduct a "defensive interview and file a motion to suppress" evidence of incriminating text messages. The trial court summarily denied relief. This petition for review followed.

¶4 On review, Babich first argues the trial court erred in rejecting his motion to strike the state's response on timeliness grounds. He asserts the court was incorrect that the state's response was timely filed because the forty-five day time limit for the state's response began to run when he mailed his petition on June 12, 2014, not when the court received it, on July 8, 2014. *See* Ariz. R. Crim. P.

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32.6(a). He relies on the general rule that we consider an incarcerated litigant's notice of post-conviction relief to be timely filed if it was timely given "to the Arizona Department of Corrections ('ADOC') for mailing." *State v. Rosario*, 195 Ariz. 264, ¶ 10, 987 P.2d 226, 228 (App. 1999). But that rule is intended to benefit the incarcerated litigant because he or she "'has no choice but to entrust the forwarding of [the] notice . . . to prison authorities whom [the inmate] cannot control or supervise and who may have every incentive to delay.'" *Id.* ¶ 9, quoting *Mayer v. State*, 184 Ariz. 242, 244, 908 P.2d 56, 58 (App. 1995). There is no reason to expand that rule to correspondingly reduce the state's time to respond to a petition for post-conviction relief. The court did not err in accepting the state's response as timely.

¶5 Babich also repeats his claims of ineffective assistance of counsel. Although we agree with the trial court's reasoning in summarily rejecting these claims on the merits, we note that Babich waived the majority of them by entering a plea of guilty. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993) (by entering guilty plea defendant waives all nonjurisdictional defects, including claim of ineffective assistance of counsel, except those that relate to validity of plea). Thus, we need not address these claims further. *See State v. Olquin*, 216 Ariz. 250, n.5, 165 P.3d 228, 231 n.5 (App. 2007) (appellate court may affirm for any reason supported by record).

¶6 Babich's only claim arguably related to the validity of his guilty plea is his claim that counsel was ineffective in failing to obtain his past medical records for the purpose of his competency evaluation pursuant to Rule 11, Ariz. R. Crim. P. But he has identified no error in the trial court's rejection of this claim, and we adopt the court's well-reasoned and correct ruling on that issue. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶7 Finally, to the extent Babich argues that his guilty plea was involuntary, he did not raise that claim below. Accordingly, we do not address it. *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.

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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”).

¶8 Although we grant review, we deny relief.