

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

HERIBERTO FRANCISCO CATARINO,  
*Petitioner.*

No. 2 CA-CR 2015-0179-PR  
Filed July 23, 2015

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NOT FOR PUBLICATION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

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Petition for Review from the Superior Court in Cochise County

No. CR201300584

The Honorable James L. Conlogue, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Heriberto Catarino, Florence

*In Propria Persona*

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**MEMORANDUM DECISION**

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

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ESPINOSA, Judge:

¶1 Heriberto Catarino seeks review of the trial court's orders denying in part his petition for post-conviction relief and motion for rehearing filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb those rulings unless the court abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Catarino has not met his burden of demonstrating such abuse here.

¶2 Catarino pled guilty to sexual conduct with a minor under the age of fifteen, attempted sexual conduct with a minor under the age of fifteen, and aggravated assault. That plea agreement included a stipulation that Catarino would be sentenced to the maximum prison term of twenty-seven years for sexual conduct with a minor, to be followed by a presumptive 2.5-year prison term for aggravated assault and lifetime probation for attempted sexual conduct with a minor. The trial court sentenced Catarino consistent with that agreement.

¶3 Catarino sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise in a Rule 32 proceeding. Catarino then filed a pro se petition for post-conviction relief, arguing the stipulated sentence for sexual conduct with a minor was improper because it "dive[sted] the court of it[']s duties to impose the minimum or maximum term," and because the court failed to find any aggravating factors in support of the increased sentence.

¶4 The trial court summarily denied relief on Catarino's first claim, but concluded it was required to find at least one aggravating factor in support of the term imposed for sexual

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conduct with a minor. It therefore set a hearing for resentencing on that count. Catarino filed a motion for rehearing, which the court denied. At resentencing, the court found as an aggravating factor “the emotional harm caused to the victim” and “confirm[ed]” the twenty-seven year prison term originally imposed. This petition for review followed.

¶5 On review, Catarino does not assert the trial court erred in rejecting his claim that the stipulated sentence was improper because it eliminated the court’s discretion in imposing sentence. He instead raises claims not asserted in his petition for post-conviction relief, but brought for the first time in his motion for rehearing or in his petition for review. We do not address claims raised for the first time on review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii). And the trial court was not required to address the claims Catarino raised for the first time in his motion for rehearing. *See* Ariz. R. Crim. P. 32.9(a); *State v. Bonnell*, 171 Ariz. 435, 438 n.3, 831 P.2d 434, 437 n.3 (App. 1992). Thus, the court did not err in summarily denying that motion, and we will not address those claims on review.

¶6 Although we grant review, relief is denied.