

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JEREMY KEITH BARRIENTES,  
*Petitioner.*

No. 2 CA-CR 2015-0371-PR  
Filed November 16, 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NOT FOR PUBLICATION  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 Maricopa County  
Nos. CR2010138881003DT; CR2003036001001  
The Honorable Cari A. Harrison, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Susan L. Luder, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

Jeremy Keith Barrientes, Tucson  
*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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ECKERSTROM, Chief Judge:

¶1 Petitioner Jeremy Barrientes 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). Barrientes has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Barrientes was convicted of misconduct involving weapons and two counts of armed robbery. The trial court imposed concurrent prison sentences, the longest of which, as stipulated in his plea agreement, were twenty-one years. Barrientes sought and was granted post-conviction relief in part. As a result, he was resentenced again to concurrent prison sentences, the longest of which were twenty-one years.

¶3 Two months later, Barrientes filed a second notice of post-conviction relief, and appointed counsel entered a notice stating she had reviewed the record and was "unable to find a tenable issue to submit" pursuant to Rule 32. In a pro se supplemental petition, however, Barrientes claimed (1) he had received ineffective assistance of counsel in relation to his guilty plea and his sentencing, specifically because the plea agreement entered in the record was not the same as what he claimed he had signed; (2) the trial court erred in entering restitution; (3) the court lacked jurisdiction over him; (4) the judgment against him was void based on that lack of jurisdiction; (5) he was denied the right to self-representation; (6) the prosecutor committed misconduct in relation to altering the written plea agreement; (7) the state was "estopped

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by a double jeopardy bar[] from prosecuting” him; and (8) the court should allow him to withdraw his guilty plea due to manifest injustice. The trial court summarily denied relief.

¶4 On review, Barrientes again contends “the plea agreement filed in this matter is not the plea agreement he si[gn]ed.” He also attempts to incorporate by reference all of his claims made below. He broadly contends the trial court abused its discretion in determining his claims were precluded and asks this court to declare “that the Plea Agreement is Unenforceable.”

¶5 Barrientes’s attempt to incorporate by reference his petition and motions below is not allowed under our rules, and would itself justify our summary refusal to grant review. *See* Ariz. R. Crim. P. 32.9(c)(1) (petition for review must contain “reasons why the petition should be granted” and either appendix or “specific references to the record,” but shall not “incorporate any document by reference, except the appendices”), (f) (appellate review under Rule 32.9 discretionary); *see also State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000) (summarily rejecting claims not complying with rules governing form and content of petitions for review), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶6 Moreover, we agree with the trial court that the majority of Barrientes’s claims are precluded either based on his guilty plea or because they were or could have been raised in his first Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(a). Insofar as Barrientes challenges the sentence imposed at his resentencing, however, such claims are not precluded. *Cf. State v. Rosales*, 205 Ariz. 86, ¶ 8, 66 P.3d 1263, 1266 (App. 2003) (claim of ineffective assistance of counsel at resentencing “separate” and “independent” of claim of ineffective assistance of appellate counsel).

¶7 To the extent we understand his claims relating to that sentence, he appears to challenge the entry of restitution and the imposition of a sentence consistent with A.R.S. § 13-704, a citation to

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which he claims was added to his written plea agreement without his consent. But the plea agreement clearly provided for restitution, and that section of the agreement is initialed by Barrientes. And as the trial court pointed out at sentencing, despite whatever inconsistencies may exist among the various copies of Barrientes's written plea agreement, the court explained the stipulated, twenty-one-year sentence provided therein to him on the record before the entry of the plea. The minute entry for his change of plea hearing also reflects the twenty-one-year sentence. Thus, even were the citation to § 13-704 added, the stipulated sentence to which Barrientes agreed did not change and was properly entered by the court at resentencing. We therefore cannot say the court abused its discretion in denying Barrientes's claims.

¶8           Although we grant the petition for review, we deny relief.