

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

CHRISTOPHER BRYAN RODRIGUEZ,  
*Petitioner.*

No. 2 CA-CR 2015-0466-PR  
Filed February 3, 2016

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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NOT FOR PUBLICATION  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  
No. CR2011136870001DT  
The Honorable Joseph C. Welty, 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*

Bruce Peterson, Maricopa County Legal Advocate  
By Consuelo M. Ohanesian, Deputy Legal Advocate, Phoenix  
*Counsel for Petitioner*

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MEMORANDUM DECISION

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

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V Á S Q U E Z, Presiding Judge:

¶1 Pursuant to a plea agreement, petitioner Christopher Rodriguez was convicted of aggravated assault with a deadly weapon or dangerous instrument, in CR2011136870001DT, in violation of A.R.S. § 13-1204(A)(2), a class two felony because the victim was a peace officer, § 13-1204(E).<sup>1</sup> He seeks review of the trial court's dismissal of his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in which he raised a claim of ineffective assistance of counsel. "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). We find no such abuse here.

¶2 Rodriguez was charged with aggravated assault under § 13-1204(A)(2) based on his use of "a pistol, a deadly weapon or dangerous instrument." The offense was charged as a class two felony under § 13-1204(E) because the victim was a peace officer engaged in the execution of his official duties. Rodriguez was also charged with weapons misconduct, in violation of A.R.S. § 13-3102. He pled guilty to the aggravated-assault charge in exchange for the dismissal of the remaining charge, and the trial court sentenced him to a nine-year prison term.

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<sup>1</sup>The current version of § 13-1204(E) was numbered as § 13-1204(D) at the time of the offense, but there were no substantive changes when the statute was renumbered, effective July 20, 2011, three days after Rodriguez committed the offense. *See* 2011 Ariz. Sess. Laws, ch. 90, § 6. We refer to statute as currently numbered.

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¶3 In the post-conviction proceeding that followed, appointed counsel filed a notice stating she had reviewed the record and found no claim to raise. Rodriguez filed a pro se petition, raising a claim of ineffective assistance of trial counsel. He argued counsel had been ineffective in advising him to enter the guilty plea because there was no evidence to establish the requisite mens rea that he knew the victim was a peace officer. He asserted counsel had “duped [him] into pleading guilty to this crime by her intentional failure to correctly advise him that the State would have to prove all the elements including intent, beyond a reasonable doubt.” Relying on the evidence presented to the grand jury and the factual basis established at the change-of-plea hearing, he argued it had been dark, he had been intoxicated, and he has poor vision, and thus the requisite elements could not be established.

¶4 The trial court denied relief after ordering counsel to provide further briefing on the elements of the offense. The court concluded trial counsel would have been ineffective if Rodriguez was correct that the offense to which he had pled guilty required the state to prove he knew or should have known the victim was a peace officer. But, the court concluded, Rodriguez did not plead guilty to aggravated assault on a peace officer pursuant to § 13-1204(A)(8)(a), rather, he was convicted of aggravated assault based on his use of a deadly weapon, pursuant to § 13-1204(A)(2), and the offense was designated a class two felony under § 13-1204(E) because the victim was a peace officer engaged in the execution of his official duties. The court reasoned that, based on the plain language of the statute, § 13-1204(A)(8)(a), a class four or five felony, *see* § 13-1204(E), requires that the defendant knew or had reason to know the victim was a “peace officer . . . engaged in the execution of any official duties,” whereas § 13-1204(E) does not. The court observed, “[H]ad the legislature intended for the state to prove the defendant knew the victim was a peace officer in this context it would have specifically stated so in . . . § 13-1204(E).”

¶5 The trial court’s ruling was correct. Indeed, after the trial court ruled in this case, and after Rodriguez filed his petition for review, in *State v. Pledger*, 236 Ariz. 469, ¶ 10, 341 P.3d 511, 513-14 (App. 2015), this court rejected the same argument for the same

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reasons as the trial court had. Rodriguez has provided no basis for disturbing the court's ruling.

¶6 We grant the petition for review but deny relief.