

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

LEONARD SCHMALLIE, JR., *Petitioner*.

No. 1 CA-CR 14-0606 PRPC
FILED 10-18-2016

Petition for Review from the Superior Court in Maricopa County
No. CR2010-006448-001
The Honorable Pamela Hearn Svoboda, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Leonard Schmallee, Jr., Tucson
Petitioner Pro Per

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MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Chief Judge Michael J. Brown joined.

T H O M P S O N, Judge:

¶1 Leonard Schmallee, Jr., petitions for review of the summary dismissal of his petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 Following a jury trial, Schmallee was convicted of four counts of aggravated driving or actual physical control while under the influence of intoxicating liquor or drugs. He was sentenced to concurrent ten-year prison terms. This court affirmed the convictions and sentences on appeal with an increase in the credit for presentence incarceration. *State v. Schmallee*, 1 CA-CR 12-0205, 2013 WL 4080746, at *1, ¶ 6 (Ariz. App. Aug. 13, 2013) (mem. decision).

¶3 Schmallee commenced a timely post-conviction relief proceeding. After appointed counsel filed a notice that he was unable to find a colorable claim to raise, Schmallee filed a *pro per* petition for post-conviction relief alleging a variety of claims. The superior court summarily dismissed the petition, finding that a number of the claims were procedurally precluded and the remainder failed to state a colorable claim for relief. This petition for review followed.

¶4 We review the summary dismissal of a post-conviction relief proceeding for an abuse of discretion. *State v. Martinez*, 226 Ariz. 464, 466, ¶ 6, 250 P.3d 241, 243 (App. 2011) (citing *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17, 146 P.3d 63, 67 (2006)). Schmallee has failed to show in his petition for review that the superior court abused its discretion in ruling that his claims were either precluded or failed to state a colorable claim for relief. Thus, there was no error in the summary dismissal of his petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.6(c).

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¶5

Accordingly, although we grant review, we deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA