IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

JERRELLE LEMAR WILLIAMS, *Petitioner*.

No. 1 CA-CR 15-0252 PRPC
FILED 4-27-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2010-108307-001
The Honorable Susan M. Brnovich, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Jerrelle Lemar Williams, Kingman
Petitioner

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Jerrelle Lemar Williams petitions this court for review from the summary dismissal of his first Rule 32 petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury found Williams guilty of three counts of sale or transportation of dangerous drugs and one count of possession or use of dangerous drugs. The trial court sentenced Williams to an aggregate term of 15.75 years' imprisonment and this court affirmed his convictions and sentences on direct appeal. In his petition for review, Williams argues his trial counsel was ineffective because counsel (1) failed to challenge the grand jury proceedings; (2) failed to adequately explain a plea offer to Williams; and (3) failed to file a motion to suppress data that investigators obtained through a warrantless search of Williams's cell phone incident to his arrest. Williams further argues that *Riley v. California*, __ U.S.__, 134 S.Ct. 2473 (2014) constitutes a significant change in the law that applies to his case and that he has newly discovered evidence that he suffered from a serious mental illness during trial.

¶3 We deny relief on the claims of ineffective assistance of counsel because Williams has failed to present colorable claims for relief. To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Regarding the failure to challenge the grand jury proceedings, Williams does not identify any grounds upon which counsel should have challenged the proceedings pursuant to Arizona Rule of Criminal Procedure 12.9(a).[1] Regarding the

---

[1] A defendant may challenge a grand jury proceeding based only on the denial of a substantial procedural right or the failure of enough

failure to adequately explain the plea offer, Williams does not identify the terms of any offer nor does he identify what counsel failed to explain to him nor what relevant information he was not aware of when he rejected the offer. Regarding the failure to move to suppress the cell phone data, Williams conceded below that at the time of his trial, counsel had no grounds upon which to seek to suppress the evidence. Further, counsel's failure to anticipate the Supreme Court decision in *Riley v. California*, discussed below, more than three years after trial was not ineffective assistance of counsel. *See State v. Febles*, 210 Ariz. 589, 597, ¶ 24, 115 P.3d 629, 637 (App. 2005) (failure to anticipate changes in law brought about by a Supreme Court decision is not ineffective assistance).

¶4 We also deny relief regarding Williams's claim that *Riley v. California* created a significant change in the law that applies to Williams's case. *Riley* held that investigators must generally obtain a warrant to search the data contained on a cell phone, even if investigators seized the phone incident to an arrest. *Riley*, __ U.S. at __, 134 S.Ct. at 2493.[2] *Riley* has no application to Williams's case, however, because Williams's convictions became final before the *Riley* decision. *See Febles*, 210 Ariz. at 592, ¶ 9, 115 P.3d at 632 (explaining when a conviction is final). Further, Williams does not explain how the *Riley* decision fits within either of the two exceptions to the rule that "new rules generally should not be applied retroactively to cases on collateral review." *Teague v. Lane*, 489 U.S. 288, 305 (1989). Those two exceptions are (1) if the new rule "places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe[,]'" or (2) if the rule "requires the observance of 'those procedures that . . . are implicit in the concept of ordered liberty.'" *Id*. at 307 (quoting *Mackey v. United States*, 401 U.S. 667, 692 (1971) and *Palko v. Connecticut*, 302 U.S. 319, 325 (1937), respectively).

¶5 Finally, we deny relief regarding Williams' claim that he has newly discovered evidence that he was mentally ill during trial. First, Williams filed a motion to vacate judgment pursuant to Rule 24.2(a)(2) and raised these same claims. Any claim a defendant raised in a post-trial motion pursuant to Rule 24 is precluded. Ariz. R. Crim. P. 32.2(a)(1). Williams could have subsequently addressed the denial of his motion to

---

qualified grand jurors to concur in the finding of the indictment. Ariz. R. Crim. P. 12.9(a).

[2] The Court nonetheless recognized there may be situations where a warrantless search of a cell phone is justified. *Riley*, __ U.S. at __, 134 S.Ct. at 2494.

vacate on direct appeal. Any claim a defendant could have raised on direct appeal is also precluded. Ariz. R. Crim. P. 32.2(a). Second, this evidence is not "newly discovered" in the context of Rule 32 because Williams's counsel admitted in the motion to vacate that Williams told her during trial that he was hearing voices. Finally, Williams underwent mental health evaluations pursuant to both Rules 26.5 and Rule 11 after the verdicts and the psychologists who evaluated him found him competent.

¶6 If Williams intended to more fully flesh out the issues and arguments he presents for review by incorporating by reference the petition he filed below, he may not do so. A petition for review may not incorporate by reference any issue or argument. The petition must set forth specific claims, present sufficient argument supported by legal authority and include citation to the record. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition must state "the issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review"); Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition must contain "[t]he reasons why the petition should be granted" and either an appendix or "specific references to the record," but "shall not incorporate any document by reference, except the appendices"); *State v. Rodriguez*, 227 Ariz. 58, 61, ¶ 12, n.4, 251 P.3d 1045, 1048, n.4 (App. 2010) (declining to address argument not presented in petition).

¶7 Accordingly, we grant review and deny relief.

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