

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

WOLFGANG WILHELM EHMKE, *Petitioner*.

No. 1 CA-CR 15-0558 PRPC
FILED 7-11-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-152885-001
The Honorable Edward W. Bassett, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By David R. Cole
Counsel for Respondent

Janelle A. McEachern Attorney at Law, Chandler
By Janelle A. McEachern
Counsel for Petitioner

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MEMORANDUM DECISION

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

M c M U R D I E, Judge:

¶1 Petitioner Wolfgang Wilhelm Ehmke petitions this court for review from the denial of his petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review but deny relief.

¶2 A jury found Ehmke guilty of two counts of misconduct involving weapons. The trial court sentenced him to concurrent terms of ten years' imprisonment and we affirmed his convictions and sentences on direct appeal. *State v. Ehmke*, 1 CA-CR12-0507, 2013 WL 5887429 (Ariz. App. Oct. 31, 2013) (mem. decision). Ehmke filed a timely petition for post-conviction relief and presented several claims of ineffective assistance of trial and appellate counsel. The trial court found one colorable claim of ineffective assistance of trial counsel but summarily dismissed the remaining claims.¹ The court held an evidentiary hearing on the colorable claim and denied relief. Ehmke now seeks review.

¶3 Ehmke argues both his trial counsel were ineffective when they failed to adequately advise him that if he rejected the State's plea offer and chose to go to trial, the jury would learn that he was a convicted felon, not just a prohibited possessor. Ehmke argues he would have accepted the plea offer had he known this.

¶4 "We examine a trial court's findings of fact after an evidentiary hearing to determine if they are clearly erroneous." *State v. Berryman*, 178 Ariz. 617, 620 (App. 1994). Ehmke concedes the trial court found both of Ehmke's trial counsel were credible when they testified they discussed the plea offer with Ehmke; informed him that the jury would learn he was a convicted felon if he rejected the plea and chose to go to trial; and informed him of the effect that information might have on the jury.

¹ Ehmke does not seek review of any of the claims the court summarily dismissed.

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Ehmke further concedes the court found his testimony at the hearing was not credible. We also note the trial court further found both counsel more credible than Ehmke when they testified that Ehmke was adamant that he wanted to go to trial. The determination of the credibility of witnesses at an evidentiary hearing in a post-conviction relief proceeding rests solely with the trial court. *State v. Fritz*, 157 Ariz. 139, 141 (App. 1988). Further, while Ehmke makes representations regarding the testimony at the evidentiary hearing, Ehmke did not seek the preparation of a transcript of the hearing pursuant to Arizona Rule of Criminal Procedure 32.8(e). Therefore, we presume the missing transcript supports the decision of the trial court. *See State v. Mendoza*, 181 Ariz. 472, 474 (App. 1995).

¶5 We grant review but deny relief.



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