IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

FRED B. KNADLER, *Petitioner*.

No. 1 CA-CR 15-0670 PRPC
FILED 5-18-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2013-001001-001
The Honorable John R. Ditsworth, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Arthur G. Hazelton, Jr.
Counsel for Respondent

Maricopa County Office of the Legal Advocate, Phoenix
By Frances J. Gray
Counsel for Petitioner

MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Judge Donn Kessler joined.

J O N E S, Judge:

¶1 Fred Knadler petitions this Court for review of the dismissal of his petition for post-conviction relief filed pursuant to Arizona Rule of Criminal Procedure 32. For the following reasons, we grant review but deny relief.

¶2 The State charged Knadler with three counts of conspiracy to commit first-degree murder (Counts 1, 3, 4) and one count of conspiracy to commit abandonment or concealment of a dead body (Count 2). In exchange for dismissing Counts 1, 2, and 4, Knadler pleaded guilty to an amended charge of attempted kidnapping, a dangerous domestic violence offense. The trial court imposed an aggravated eight-year prison term with 740 days of presentence incarceration credit.

¶3 Knadler timely filed a notice of, and petition for, post-conviction relief. Finding Knadler raised no colorable claims, the trial court dismissed the Rule 32 proceedings and denied Knadler's subsequent request for a rehearing. Knadler timely petitioned this Court for review. As he did in his Rule 32 petition, Knadler argues in his petition for review: (1) the factual basis for the amended charge of attempted kidnapping was insufficient to support his guilty plea; (2) his guilty plea was not made knowingly, intelligently, and voluntarily; and (3) his trial counsel was ineffective.

¶4 "We review for [an] abuse of discretion the superior court's denial of post-conviction relief based on lack of a colorable claim." *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006) (citing *State v. Krum*, 183 Ariz. 288, 293 (1995)). "A defendant is entitled to an evidentiary hearing when he presents a colorable claim, that is a claim which, if [the] defendant's allegations are true, might have changed the outcome." *State v. Watton*, 164 Ariz. 323, 328 (1990) (citing *State v. Schrock*, 149 Ariz. 433, 441 (1986)). Simply stated, a hearing should be held when doubts exist. *Id.*

¶5 When there is a plea agreement, the trial court must determine a factual basis exists for each element of the crime to which the defendant is pleading. *State v. Louden*, 127 Ariz. 249, 251 (App. 1980) (citations omitted); *see also* Ariz. R. Crim. P. 17.3. "The factual determination does not require a finding that the defendant is guilty beyond a reasonable doubt, but only 'strong evidence of actual guilt.'" *State v. Norris*, 113 Ariz. 558, 559 (1976) (citing *State v. Reynolds*, 25 Ariz. App. 409, 413 (1976), then quoting *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)). Moreover, the factual basis may be derived from the defendant's statements, police reports, transcripts of grand jury proceedings, "and other satisfactory information." Ariz. R. Crim. P. 26.2(d); *see also State v. McVay*, 131 Ariz. 369, 373 (1982) (citing *State v. Varela*, 120 Ariz. 596, 598 (1978)).

¶6 A person commits attempted kidnapping by "engag[ing] in conduct intended to aid another" in "knowingly restraining [a third party] with the intent to . . . [i]nflict death, physical injury or a sexual offense on the victim, or to otherwise aid in the commission of a felony," even if the offense is not committed or attempted by the other person." Ariz. Rev. Stat. (A.R.S.) §§ 13-1001(A)(3),[1] -1304(A)(3). "'Restrain' means to restrict a person's movements [through physical force, intimidation, or deception], without legal authority, and in a manner which interferes substantially with such person's liberty, by either moving such person from one place to another or by confining such person." A.R.S. § 13-1301(2)(a).

¶7 Here, the factual basis satisfies the elements of attempted kidnapping. The transcript from the grand jury proceedings indicates Knadler solicited an undercover police officer to have both an ex-employee and his ex-wife "whack[ed]." Specifically, Knadler informed the undercover officer he was to expose both intended victims to a substance that creates heart distress and ensure both were found in a place that made the incidents look accidental — Knadler's ex-employee was to be found in his truck and Knadler's ex-wife could be found in or near her home.

¶8 At the change of plea hearing, Knadler's counsel summarized this factual basis for attempted kidnapping as follows:

> On or about February 12, 2013, in Maricopa County, Mr. Knadler had a conversation with an undercover police officer. During that conversation Mr. Knadler asked that officer to restrain [his ex-wife] for the purpose of inflicting a felony

[1] Absent material changes from the relevant date, we cite a statute's current version.

> upon her and that was to inject her with a drug that would disable her.

Furthermore, Knadler admitted to the court that "those facts [described by counsel are] true . . . and [that] is what [I] did."

¶9 The record therefore demonstrates Knadler engaged an undercover police officer to inflict death or serious physical injury on his ex-wife and an ex-employee through means that would likely involve the movement or confining of those victims, however temporarily, through force or deception. On this record, and in light of Knadler's intelligent and voluntary guilty plea to attempted kidnapping, *see infra* ¶ 12; *State v. Campbell*, 107 Ariz. 348, 351 (1971) (holding defendant's clear and concise admission of guilt during his plea colloquy was a satisfactory factual basis upon which the trial court could accept defendant's guilty plea), the trial court appropriately found strong evidence of Knadler's guilt of the offense of attempted kidnapping.[2]

¶10 As to whether Knadler's plea was voluntary and intelligent, the trial court, before accepting his guilty plea, was required to inform Knadler of: (1) the nature of the charge; (2) the range of possible sentence; (3) the constitutional rights the defendant foregoes by pleading guilty; (4) the right to plead not guilty; (5) the waiver of defendant's right to a direct appeal by pleading guilty; and (6) the immigration consequences, if any, of the defendant's plea. Ariz. R. Crim. P. 17.2. Moreover, the court had to determine the plea was "voluntary and not the result of force, threats or promises." Ariz. R. Crim. P. 17.3.

¶11 Before accepting Knadler's plea, the trial court ensured: (1) Knadler's medication was not impairing his ability to understand the proceedings; (2) because of Knadler's blindness, Knadler's counsel read the plea agreement to him and the two "had a long conversation about it"; (3) Knadler understood the agreement and the possible range of sentence; (4) Knadler understood the constitutional and other rights he was

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[2] The record further exhibits strong evidence that the attempted kidnapping in this case qualified as a dangerous offense, as Knadler intended to poison the victims with a substance known to cause heart attacks. *See* A.R.S. § 13-105(12) ("'Dangerous instrument' means anything that under the circumstances in which it is used, attempted to be used or threatened to be used is readily capable of causing death or serious physical injury."), (13) (defining a dangerous offense as one involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument).

foregoing, including his right to a direct appeal; and (5) the amended charge was read to Knadler. Based on these assurances, the court accepted the plea, finding Knadler knowingly, intelligently, and voluntarily pled guilty. Contrary to Knadler's argument, the record thus establishes that he understood the nature of the amended charge, and his plea was otherwise knowingly, intelligently, and voluntarily made.

¶12 Finally, Knadler argues trial counsel was ineffective because "she allowed Knadler to plead guilty to a charge that was not supported by the facts and which he did not understand." Based on our resolution of the preceding issues, we reject this argument.

¶13 For the stated reasons, the trial court did not abuse its discretion in finding Knadler's petition for post-conviction relief did not present a colorable claim. We therefore grant review and deny relief.

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