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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ZANE SCOTT DICKINSON, *Petitioner*.

No. 1 CA-CR 15-0702 PRPC
FILED 6-20-2017

Petition for Review from the Superior Court in Mohave County
No. CR2011-00757
The Honorable Steven F. Conn, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mohave County Attorney's Office, Kingman
By Matthew J. Smith
Counsel for Respondent

Zane Scott Dickinson, Tucson
Petitioner

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Diane M. Johnsen and Judge Jennifer B. Campbell joined.

N O R R I S, Judge:

¶1 Zane Scott Dickinson petitions for review of the summary dismissal of his petition for post-conviction relief. We grant review, but deny relief.

¶2 In 2012, a jury convicted Dickinson of attempted second degree murder, two counts of aggravated assault, and leaving the scene of an accident involving death or injury. The superior court sentenced Dickinson to an aggregate term of 14 years' imprisonment, and this court affirmed the convictions and sentences on direct appeal.[1]

¶3 Dickinson petitioned for post-conviction relief on May 5, 2015, arguing his trial counsel was ineffective because: first, he did not discuss with Dickinson his right to testify at trial, did not explain to Dickinson he was entitled to decide whether to testify at trial, and "rested" the case without calling him as a witness; and, second, did not cross-examine the victim regarding the victim's motive (to obtain insurance money) in testifying against Dickinson. The superior court dismissed Dickinson's petition on August 28, 2015, finding his claims were directly contradicted by the trial record.

¶4 We review the summary dismissal of a petition for post-conviction relief for abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17, 146 P.3d 63, 67 (2006) (citation omitted). Summary dismissal of a petition for post-conviction relief is appropriate "[i]f the court . . . determines that no . . . claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings . . . ." Ariz. R. Crim. P. 32.6(c). In other words, "a petition that fails to state a colorable claim may be dismissed without an evidentiary hearing." *State v. Kolmann*, 239 Ariz. 157, 160, ¶ 8, 367 P.3d 61, 64 (2016). To state a colorable claim of ineffective assistance of counsel, a defendant must show counsel's performance fell

[1] *State v. Dickinson*, 233 Ariz. 527, 314 P.3d 1282 (App. 2013).

below objectively reasonable standards and the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687, 104 S. Ct. 2052, 2064, 80 L. Ed. 2d 674 (1984). In determining whether a claim is colorable, the allegations are viewed in light of the entire record. *State v. Lemieux*, 137 Ariz. 143, 146, 699 P.2d 121, 124 (App. 1983).

¶5 The superior court did not abuse its discretion in dismissing Dickinson's petition for post-conviction relief. As the superior court found, the record directly contradicted Dickinson's claims. Dickinson explicitly told the superior court he had decided not to testify at trial, and his attorney cross-examined the victim on his claim under Dickinson's automobile insurance policy.

¶6 For the foregoing reasons, although we grant review, we deny relief.[2]

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

[2]After the superior court denied Dickinson's petition for post-conviction relief, Dickinson filed a notice of post-conviction relief. The superior court treated Dickinson's notice as a second petition for post-conviction relief, and summarily dismissed it. Dickinson has petitioned for review of the court's dismissal of his second petition for post-conviction relief. We express no opinion regarding the merits of that pending petition for review.