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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

CARLOS LEAUDRE WEBB, *Petitioner*.

No. 1 CA-CR 18-0549 PRPC
FILED 10-23-2018

Petition for Review from the Superior Court in Maricopa County
No. CR 2013-002132-001
The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Jeffrey R. Duvendack
Counsel for Respondents

The Nolan Law Firm, PLLC, Mesa
By Todd E. Nolan, Cari McConeghy Nolan
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Jennifer B. Campbell and Judge Kent E. Cattani joined.

M c M U R D I E, Judge:

¶1 Petitioner Carlos Leandre Webb seeks review of the superior court’s summary dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32. We have considered the petition for review and the response, and, for the reasons stated, grant review but deny relief.

FACTS AND PROCEDURAL BACKGROUND

¶2 On July 26, 2013, Webb was indicted on nine criminal counts, including one count of attempted second-degree murder, a class 2 dangerous felony; one count of kidnapping, a class 2 dangerous felony; two counts of aggravated assault, both class 3 dangerous felonies; one count of attempted sexual assault, a class 3 dangerous felony; one count of disorderly conduct, a class 6 dangerous felony; one count of misconduct involving weapons, a class 4 felony; a second count of misconduct involving weapons, a class 1 misdemeanor; and one count of threatening and intimidating, a class 1 misdemeanor. The charges stemmed from an incident in April 2012, where Webb used a gun to threaten, kidnap, and ultimately shoot the victim who had refused his romantic advances. *See State v. Webb*, 1 CA-CR 14-0546, 2016 WL 1273302, at *1 (Ariz. App. Mar. 31, 2016) (mem. decision).

¶3 Prior to trial, the superior court held three separate settlement conferences to facilitate plea negotiations between Webb and the State: one on April 8, 2013, shortly before Webb was indicted; a second on December 17, 2013, while pre-trial motions were still being resolved; and a third on April 16, 2014, on the eve of trial. At each conference, Webb was advised of the charges, the sentencing ranges those charges carried in the event of an unfavorable verdict after trial, and the strength of the State’s case against him. During these proceedings, Webb initially insisted on going to trial, and rejected a plea offer from the State to serve a 25-year flat sentence. By the time of the last settlement conference, however, Webb expressed a

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willingness to negotiate, and made the State a plea offer for a 10 to 17-year sentence. This offer was not accepted by the State, and the case went to trial.

¶4 At trial, a jury convicted Webb of one count of attempted second-degree murder, one count of kidnapping, and two counts of aggravated assault. Ultimately, Webb was sentenced to 20 years' imprisonment for the attempted second-degree murder offense and 18 years' imprisonment for the kidnapping offense to be served consecutively. Webb was also sentenced to 7.5 years' imprisonment for each aggravated assault offense to be served concurrently with the 20-year attempted second-degree murder sentence.¹

¶5 Webb petitioned for post-conviction relief, arguing he received ineffective assistance of counsel during the plea negotiations. Specifically, Webb alleged that his counsel from April 2013 to November 2013 misinformed him about the credibility of the victim and that, based on this incorrect information, he chose to reject all plea offers and go to trial. The superior court found Webb failed to state a claim that would entitle him to relief under Rule 32.6(c) and summarily dismissed his petition without holding an evidentiary hearing. Webb then petitioned this court to review the dismissal of his petition for post-conviction relief.

DISCUSSION

¶6 In his petition for review, Webb argues the superior court erred by (1) denying relief under his ineffective assistance of counsel claim and (2) failing to grant an evidentiary hearing concerning his claim for relief.² Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State*

¹ Webb's convictions were affirmed on appeal, but the case was remanded for resentencing. *Webb*, 2016 WL 1273302, at *1, ¶ 1. On appeal after the resentencing, the sentences were affirmed, but the sentencing judgment was modified to correct an error in the presentence incarceration credit calculation. *State v. Webb*, 1 CA-CR 16-0497, 2017 WL 2544504, at *2, ¶ 8 (Ariz. App. June 13, 2017) (mem. decision).

² In his petition for review, Webb also argues, for the first time, that his counsel recommended that he "proceed to trial an [sic] reject the plea." Because this allegation was not presented to or considered by the superior court, we do not address it here. *State v. Carver* 160 Ariz. 167, 175 (1989); *State v. Herrera*, 183 Ariz. 642, 648 (App. 1995).

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v. Gutierrez, 229 Ariz. 573, 577, ¶ 19 (2012). A summary dismissal of a petition for post-conviction relief is appropriate if the court determines the defendant has failed to present a colorable claim for relief. Ariz. R. Crim. P. 32.6(d)(1). A colorable claim is a claim that, if true, might have changed the outcome. *State v. Runningeagle*, 176 Ariz. 59, 63 (1993).

¶7 To state a colorable claim of ineffective assistance of counsel, a petitioner must show counsel's performance fell below objectively reasonable standards and that there is a reasonable probability that the deficient performance prejudiced the petitioner. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984). "To establish deficient performance during plea negotiations, a petitioner must prove that the lawyer either (1) gave erroneous advice or (2) failed to give information necessary to allow the petitioner to make an informed decision whether to accept the plea." *State v. Donald*, 198 Ariz. 406, 413, ¶ 16 (App. 2000). "To establish prejudice in the rejection of a plea offer, a defendant must show 'a reasonable probability that, absent his attorney's deficient advice, he would have accepted the plea offer' and declined to go forward to trial." *Id.* at 414, ¶ 20 (quoting *People v. Curry*, 687 N.E.2d 877, 888 (Ill. 1997)).

¶8 Here, the superior court properly concluded that Webb's misinformed view of the victim's credibility had no bearing on his ability to make an informed choice of whether to accept the State's plea offer. Even assuming his counsel misinformed him about the credibility of the victim's story, it would stretch the boundaries of reason to hold that a lawyer's mistaken assessment of evidence amounts, on its own, to professionally unreasonable conduct. So long as they are made after a thorough investigation of the law and facts of the case, strategic choices, and the assessments that underlie those choices, are "virtually unchallengeable." *Strickland*, 466 U.S. at 690; *State v. Pandeli*, 242 Ariz. 175, 182, ¶ 15 (2017). And there is no indication from either the record or Webb's allegations that his counsel did not thoroughly investigate the facts and law surrounding his case.

¶9 Holding that a lawyer's mistaken analysis of the facts or evidence alone justifies an ineffective assistance of counsel claim would upend the "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Strickland*, 466 U.S. at 689; see also *State v. Nash*, 143 Ariz. 392, 398 (1985) (adopting *Strickland's* "professionally reasonable" standard). And such a decision would also create the type of "intrusive post-trial inquiry into attorney performance" the Court in *Strickland* feared "would encourage the proliferation of ineffectiveness challenges." 466 U.S. at 690.

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¶10 Moreover, the record in this case belies any claim that, but for his counsel's statements about the victim's story, Webb would have accepted the 25-year plea offer. Webb was informed multiple times of the strength of the State's case against him, the persuasive effect the victim's testimony would have on a jury, and the potential consequences he faced in choosing to go to trial. Webb also actively engaged in negotiations to try to obtain a plea agreement for a sentence lower than 25 years. The record, in sum, demonstrates that Webb made an informed choice to reject the plea offer, attempted to obtain a more favorable plea agreement, and ultimately chose to go to trial, as was his absolute right.

¶11 Accordingly, we hold Webb has not presented a colorable claim of ineffective assistance of counsel, and that the superior court did not abuse its discretion by summarily dismissing his petition for post-conviction relief.

CONCLUSION

¶12 For the foregoing reasons, we grant review but deny relief.



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