

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAR -8 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0376-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
AMMAR DEAN HALLOUM,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20072618

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Ammar Dean Halloum

Tempe
In Propria Persona

B R A M M E R, Judge.

¶1 Pursuant to a plea agreement, petitioner Ammar Halloum was convicted of theft by financial exploitation of a vulnerable adult and fraudulent scheme and artifice. The trial court sentenced him to the presumptive prison term of 2.5 years for theft, followed by a seven-year probationary term for fraudulent scheme and artifice. Halloum sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., challenging his

sentence on the ground the court had considered improper aggravating circumstances. After the court found he had not raised a colorable claim and denied relief, we denied relief on review. He now seeks review of the court’s summary dismissal of his second petition for post-conviction relief. Absent an abuse by the court of its discretion to determine whether post-conviction relief is warranted, we will not disturb its ruling. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶2 In his petition for post-conviction relief, Halloum argued trial counsel had been ineffective in connection with sentencing because the sentencing memorandum he had filed failed to cite any legal authority in support of a mitigated sentence, he did not request a hearing, and he presented no evidence or witnesses at sentencing. Halloum asserted this could not have been a tactical decision by counsel but “was nothing more than laziness” on counsel’s part. Halloum also asserted counsel had addressed Halloum’s history of mental illness but did not provide any documents to support it. And, he argued, counsel had been a “neutral observer” at sentencing and prejudice should be presumed. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (defendant must show counsel’s performance deficient and the performance prejudiced him in order to be entitled to relief based on claim of ineffective assistance of counsel); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985) (adopting *Strickland* test).

¶3 In denying Halloum’s second petition for post-conviction relief, the trial court first pointed out that defense counsel had filed a sentencing memorandum and had argued certain factors were mitigating circumstances. “After 14-plus years on the Bench,” the court commented, it did “not need to have legal citations as to what

constitutes mitigating factors.” The court also observed that Halloum “himself [had] raised his mental health at the sentencing, as well as earlier in the case,” and that testimony from mental health experts had been presented “throughout the case.” The court added that it could have sentenced Halloum to an aggravated prison term given the “nature and circumstances of the offense,” and that “the amount of restitution owing dictated the length of the probation term.” Concluding that counsel had not been ineffective, the court stated, “no matter what could have been presented at a sentencing hearing, the presumptive term or more would have been imposed.”

¶4 At the outset we note the trial court could have denied Halloum’s petition on the ground that he was precluded from raising the claim of ineffective assistance of counsel. Rule 32.1 precludes a defendant from seeking relief based on a claim that has been adjudicated on appeal or in any previous collateral proceeding or any ground that has been waived by the defendant’s failure to raise the claim on appeal or other proceeding. Ariz. R. Crim. P. 32.2(a)(2), (a)(3). “[W]here ineffective assistance of counsel claims are raised, or could have been raised, in a Rule 32 post-conviction relief proceeding, subsequent claims of ineffective assistance will be deemed waived and precluded.” *State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002); *see also State v. Swoopes*, 216 Ariz. 390, ¶ 23, 166 P.3d 945, 952-53 (App. 2007) (same). Halloum did not raise the ineffective assistance of counsel claim in the first post-conviction proceeding although he had the opportunity to do so.

¶5 Additionally, Halloum has not sustained his burden on review of establishing the trial court abused its discretion by denying relief on the merits. The court

rejected Halloum’s argument that counsel had performed deficiently and found, in any event, the presumptive prison term and the seven-year term of probation were appropriate and no additional information would have changed that. We have no basis for interfering here because the court did not abuse its discretion when it initially imposed the sentence or when it denied the petition for post-conviction relief. We will not address the arguments Halloum raises for the first time in his pro se petition for review. *See* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”); *see also* *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (issues may not be raised for first time in petition for review).

¶6 We grant the petition for review but deny relief.

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge