

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

OCT 25 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0237-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOHN FRANCIS REE, JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20101431002

Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

John Francis Ree, Jr.

Florence
In Propria Persona

ESPINOSA, Judge.

¶1 Petitioner John Francis Ree, Jr., seeks review of the trial court's dismissal of his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., without an evidentiary hearing. "We will not disturb a trial court's ruling on a petition for post-

conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Ree pled guilty to one count of possession of equipment for the purpose of manufacturing a dangerous drug, and one count of manufacturing a dangerous drug. Pursuant to the plea agreement, he admitted four historical prior felony convictions. In exchange for Ree’s pleas and admissions, the state agreed to dismiss the remaining charges and to dismiss, with prejudice, another pending indictment.

¶3 In his pro se petition for post-conviction relief, Ree contended his federal and state constitutional rights were violated because he had been entrapped, a confidential informant was utilized by law enforcement, and his confession was coerced; the state presented evidence that was false and misleading during the grand jury proceeding; his right to be free from illegal searches and seizures was violated because law enforcement officers obtained and executed a search warrant that contained false information; the trial court failed to conduct a hearing pursuant to *United States v. Curcio*, 680 F.2d 881 (2d Cir. 1982); and trial counsel had been ineffective, particularly with respect to pre-trial preparation and the filing of pre-trial motions. He also contends the court abused its discretion by denying his motion to reconsider its denial of his request to expand the record.

¶4 The trial court identified and evaluated each of Ree’s claims. Ree has not persuaded us the court abused its discretion in dismissing the petition, and we agree with the court that most of the claims were not “cognizable” under Rule 32.1. There is, however, an additional and more fundamental reason why summary dismissal of the

petition was appropriate. By entering into a plea agreement and thereby entering a guilty plea, a defendant waives all non-jurisdictional defects and defenses, including claims of ineffective assistance of counsel, except those that relate to the validity of a plea. *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993).

¶5 Thus, claims such as the alleged defectiveness of the warrant, the purportedly deficient grand jury proceeding, the coerced confession, and allegations of ineffective assistance related to these claims or counsel's pre-trial investigation and performance with respect to pre-trial motions, were waived by the guilty plea. Moreover, with respect to the claim based on the grand jury proceeding, the trial court correctly observed that Ree had provided an adequate factual basis for the guilty pleas at the change-of-plea hearing. Trial counsel related the factual basis and the court asked Ree if he agreed with what counsel had said. Ree stated he did. Although the court then incorporated the transcript from the grand jury proceeding to provide additional factual support for the pleas, there already was a sufficient basis; furthermore, neither Ree nor his attorney raised any objection at that time regarding the grand jury proceeding.

¶6 With respect to the claims of ineffective assistance of counsel, because Ree did not connect counsel's allegedly deficient performance to negotiating the plea agreement, evaluating its favorability, informing Ree about the terms of the plea agreement, and advising Ree to accept it, such claims are waived. *See State v. Anderson*, 147 Ariz. 346, 350-52, 710 P.2d 456, 460-62 (1985). To the extent any of Ree's claims even arguably related to the validity of the plea, Ree has not demonstrated how the trial court abused its discretion in finding them not colorable. Rather, the record before us

establishes Ree entered the plea agreement knowingly, voluntarily and intelligently and he has not persuaded us the trial court abused its discretion in rejecting any of the claims that appear to challenge the validity of the plea.

¶7 Finally, Ree has not established the trial court abused its discretion in denying his request to expand the record. In its minute entry denying post-conviction relief, the court incorporated its February 29, 2012 ruling in which it had denied the initial request to expand the record. The court neither abused its discretion in the first instance nor did it abuse its discretion when it denied the motion to reconsider.

¶8 The petition for review is granted. But for the reasons stated, relief is denied.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge