

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

THOMAS JAMES ODOM,
Petitioner.

No. 2 CA-CR 2016-0035-PR
Filed April 7, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2010121445001DT
The Honorable Karen L. O'Connor, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Ballecer & Segal, LLP, Phoenix
By Natalee Segal
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

ESPINOSA, Judge:

¶1 Thomas Odom seeks review of the trial court's ruling summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We grant review but deny relief.

¶2 Odom was convicted of first-degree murder and sentenced to natural life in prison. We affirmed his conviction and sentence on appeal. *State v. Odom*, No. 1 CA-CR 11-0609 (memorandum decision filed Aug. 28, 2012). Odom then sought post-conviction relief, arguing his trial counsel had been ineffective in advising him to reject a plea offer from the state that would have called for a life sentence with the possibility of release after twenty-five years. He asserted that trial counsel had told him he would not receive a natural life sentence due to his age¹ and mental health issues. The trial court summarily denied relief. It concluded Odom had not "establish[ed] that a plea offer was made,"² that counsel had fallen below prevailing professional norms, or that "the outcome of

¹Odom was sixteen years old at the time of his offense.

²The record is unclear whether a plea was offered. Although the prosecutor and defense counsel told the trial court at sentencing no plea offer had been made, a joint pretrial statement indicates a plea had been offered which called for a life sentence "with release in 25 years." We agree with the state, however, that the pretrial statement contains other discrepancies that suggest the reference to a plea offer was a mistake.

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his case would have been any different.” This petition for review followed.

¶3 On review, Odom asserts he made a colorable claim of ineffective assistance of counsel and was entitled to an evidentiary hearing and to have the original plea offer reinstated. “To state a colorable claim of ineffective assistance of counsel,” Odom was required to show “both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). In determining whether a claim is colorable and, thus, if a defendant is entitled to an evidentiary hearing, we treat the defendant’s factual allegations as true. *See Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d at 68; *State v. D’Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988).

¶4 To obtain a hearing, Odom was required to allege facts supporting the conclusion that counsel had failed to give him sufficient information “to make an informed decision whether to accept the plea” and that he would have waived his right to a jury trial and accepted the state’s plea offer had counsel given him sufficient information. *State v. Donald*, 198 Ariz. 406, ¶¶ 16, 20, 10 P.3d 1193, 1200-01 (App. 2000). Odom has not met this burden. Even assuming counsel fell below prevailing professional norms by predicting Odom would not receive a natural life sentence, that fact does not establish that competent counsel would not have encouraged him to reject the state’s plea offer. And, in any event, Odom did not assert he would have foregone trial and pled guilty had he been advised a natural life sentence was possible.

¶5 Although review is granted, relief is denied.