

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JAMES LEE LITT JR.,
Petitioner.

No. 2 CA-CR 2016-0137-PR
Filed August 8, 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NOT FOR PUBLICATION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. CR2011007856001DT
The Honorable Jeanne Garcia, Judge

REVIEW GRANTED; RELIEF DENIED

James Lee Litt, Douglas
In Propria Persona

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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 Petitioner James Litt Jr. seeks review of the trial court's order dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "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 After a jury trial, Litt was convicted of burglary in the third degree and attempted theft of a means of transportation. The trial court sentenced him to concurrent, presumptive, ten-year prison terms, and this court affirmed his convictions and sentences on appeal. *State v. Litt*, No. 1 CA-CR 12-0234 (Ariz. App. Apr. 2, 2013) (mem. decision). Litt sought post-conviction relief, asserting his "first attorney" had been ineffective for failing to advise him of a seven-year plea offer, which he maintained he would have accepted had he known about it. Following an evidentiary hearing, at which Litt and Maricopa County Public Defender Angela Demarse testified on the "sole issue . . . whether Mr. Litt was advised of the state's plea offer before the preliminary hearing," the court denied his petition. This petition for review followed.

¶3 At the evidentiary hearing, Demarse testified that although she could not specifically recall Litt or having met with him on June 13, 2011, her notes, which she generally ensured "accurate[ly]" reflected her meetings with clients and were in her handwriting, showed she had met with Litt on that date, discussed, inter alia, the stipulated seven-year plea offer, the charges and his prior convictions, and his sentencing exposure at trial. Notably, in Demarse's written notes, which were admitted as an exhibit at the

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evidentiary hearing, she stated “[defendant] well advised to take plea due to risk [at] trial [with] priors. Likely to get an agg[ravated] term.” Demarse’s notes further provided, “[Defendant] wants to go to trial [because] he did nothing wrong.” Additionally, the minute entry from the June 13, 2011 hearing shows Demarse as Litt’s attorney on that day.

¶4 In contrast, Litt testified he had never met Demarse, either on June 13, 2011, or at any time. He added that he had not learned about the seven-year plea offer until after he was sentenced and that he would have accepted the offer had he been told about it on June 13, 2011.

¶5 On review, Litt essentially reasserts the argument he raised below, to wit, that his attorney, who he now states was Mikel Steinfeld, did not notify him of the state’s seven-year plea offer, which he would have accepted.¹ In a thorough, well-reasoned ruling, the trial court identified the claim Litt had raised and resolved it correctly and in a manner permitting this court to review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Litt has not persuaded us on review that the court’s resolution of his claim was incorrect. And no purpose would be served by restating the court’s ruling in its entirety here; rather, we adopt it. *See id.*

¶6 We further note that, to the extent Litt’s argument on review invites us to reweigh the evidence presented at the hearing, we will not do so. It is the trial court’s role to resolve conflicts in the evidence; just as we do not reweigh trial evidence on appeal, *see State v. Lee*, 189 Ariz. 590, 603, 944 P.2d 1204, 1217 (1997), we do not reweigh evidence presented at a post-conviction evidentiary hearing, *see State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding).

¹To the extent Litt also asserts Demarse, who he maintains did not represent him below, was ineffective for providing false testimony at the evidentiary hearing, we do not address that claim.

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¶7 Because Litt has not sustained his burden of establishing the trial court abused its discretion in denying his petition, although we grant review, relief is denied.