

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOHN CHARLES ZUBER,
Petitioner.

No. 2 CA-CR 2016-0181-PR
Filed June 3, 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NOT FOR PUBLICATION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 Yavapai County
No. V1300CR201280589
The Honorable Michael R. Bluff, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney
By Patti M. Wortman, Deputy County Attorney, Camp Verde
Counsel for Respondent

C. Kenneth Ray II, P.C., Prescott
By C. Kenneth Ray II
Counsel for Petitioner

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MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 Petitioner John Zuber seeks review of the trial court’s order denying 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). Zuber has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Zuber was convicted of possession of dangerous drugs for sale. The trial court imposed a “slightly aggravated,” eleven-year term of imprisonment.

¶3 Zuber initiated a proceeding for post-conviction relief, claiming in his petition that he had received ineffective assistance of trial counsel and been “denied due process of law by being unable to present . . . evidence that the State breached the cooperation agreement.” The trial court summarily denied relief.

¶4 On review, Zuber repeats his claims and contends the trial court abused its discretion in summarily denying relief. He alleges that counsel was ineffective in failing to investigate, research and present pretrial motions, or provide “appropriate legal advice” on various issues, including (1) whether officers had reasonable suspicion to stop him, (2) whether officers had probable cause to detain him, (3) whether he was obligated to “submit to being detained,” (4) whether his detention created “an unreasonable delay to permit the arrival of the K-9” unit, (5) whether the K-9 alerted to his vehicle, (6) whether information from an unidentified source was

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sufficiently reliable, and (7) whether his consent to search his residence was valid.

¶5 “To state a colorable claim of ineffective assistance of counsel, a defendant must 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). To show prejudice, a defendant must show a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* In the context of a guilty plea, a defendant must demonstrate he would not have waived his right to a jury trial absent counsel’s deficient performance and must provide an “allegation of specific facts which would allow a court to meaningfully assess why that deficiency was material to [his] decision” to waive his rights. *State v. Bowers*, 192 Ariz. 419, ¶ 25, 966 P.2d 1023, 1029 (App. 1998).

¶6 Although Zuber cites legal authority in association with the claims he asserts counsel should have investigated or raised, he has not provided any legal argument suggesting such claims would have been successful on the facts of this case. Nor has he explained if or how any of counsel’s purported failures impacted his decision to plead guilty. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993) (by entering guilty plea defendant waives all nonjurisdictional defects, including claim of ineffective assistance of counsel, except those relating to validity of plea). The trial court therefore properly rejected his claims of ineffective assistance of counsel.

¶7 Zuber also contends the trial court should have allowed him to withdraw from his plea agreement because the state breached a “cooperation agreement” it had entered with him. In his motion to withdraw from the agreement, filed before sentencing, Zuber stated that when his attorney had contacted the state about the agreement, he was informed Zuber had not maintained contact with the state as required by the agreement, and it did not want to

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proceed with it. Zuber does not dispute that he failed to comply with one of the terms of the agreement – that he “maintain personal contact daily” with his handling detective. In view of Zuber’s own failure to establish he had met the terms of the agreement, we cannot say the trial court abused its discretion in denying relief.

¶8 For these reasons, although we grant the petition for review, we deny relief.