

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GREGORY VORBECK WELCH,
Petitioner.

No. 2 CA-CR 2016-0239-PR
Filed August 17, 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NOT FOR PUBLICATION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. CR2012008715001DT
The Honorable Pamela Gates, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Amanda M. Parker, Deputy County Attorney, Phoenix
Counsel for Respondent

Gregory Vorbeck Welch, Kingman
In Propria Persona

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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 Gregory Welch 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 that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Welch has not met his burden of demonstrating such abuse here.

¶2 Welch pled guilty to aggravated taking of the identity of another and possession of drug paraphernalia. He also admitted having a previous felony conviction for forgery, committed in 2007. The trial court sentenced him to concurrent prison terms, the longer of which is seven years.

¶3 Welch sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise pursuant to Rule 32.1. Welch then filed a pro se petition asserting his trial counsel had not adequately investigated his case and, if she had done so, she would have discovered he did not steal the identity documents found in his possession and thus he "may have been offered a better plea agreement." He also claimed he had withdrawn his request for new counsel due to "bias" and "duress" because the court advised him his current counsel was "one of the best." Welch additionally cited several factors he claimed called for leniency in his sentence, including family hardship and mental illness, and suggested the "statu[t]e of limitations" had run for his 2007 conviction. The trial court summarily dismissed the petition and denied Welch's subsequent motion for reconsideration. This petition for review followed.

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¶4 On review, Welch first repeats his claim that counsel inadequately investigated his case and suggests he would have received a more favorable plea offer had she done so. “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). Even if we disregard that Welch has waived any claim of ineffective assistance of counsel unrelated to the voluntariness of his plea, *see State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993), his assertion that he would have received a more favorable plea offer is entirely speculative and, thus, he has not demonstrated resulting prejudice.

¶5 Welch also again requests a lesser sentence, citing various factors such as his mental health and family hardship. But he does not assert his sentence was unconstitutional or unauthorized by the law, or that it exceeds the legal maximum. Ariz. R. Crim. P. 32.1(a), (c). Sentencing determinations are left to the trial court’s sound discretion, *State v. Cazares*, 205 Ariz. 425, ¶¶ 6, 8, 72 P.3d 355, 357 (App. 2003), and Welch has not articulated any basis for relief from his sentence under Rule 32.1.

¶6 To the extent Welch asserts the trial court erred in rejecting his claim that the “statu[t]e of limitations” applied to his case, he does not develop this argument in any meaningful way and we therefore do not address it further. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review). For the same reason, we do not address his claim that he was entitled to different counsel.

¶7 Welch also seeks to “amend[]” the issues he raises, asserting he “was able to contact one [of] the witnesses” who would testify that the items he had in his possession were not his. Even if this claim appeared cognizable under Rule 32, we do not address claims raised for the first time on review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

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¶8

We grant review but deny relief.