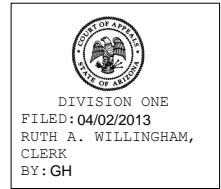


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 11-0585
) 1 CA-CR 12-0614 PRPC
Appellee,) (Consolidated)
)
v.) DEPARTMENT C
)
) Yavapai County
STEVEN FREDERICK SKINNER,) Superior Court
) No. P1300CR200901310
Appellant.)
) **D E C I S I O N**
) **O R D E R**
)

Steven Frederick Skinner petitions this court for review from the summary dismissal of his petition for post-conviction relief. Presiding Judge Thumma and Judges Brown and Johnsen, having reviewed Skinner's petition and the State's response, grant review and relief as set forth below.

The State charged Skinner with two counts of kidnapping, two counts of sexual assault and ten counts of sexual conduct with a minor, all based on alleged conduct with the same victim. Before trial, the superior court granted the State's motion to dismiss the kidnapping counts without prejudice. A jury convicted Skinner of nine counts of sexual conduct with a minor and acquitted him of one count of sexual conduct with a minor

and the two sexual assault counts. The court sentenced Skinner to concurrent terms of 1.75 years' imprisonment for seven of the nine counts of sexual conduct with a minor and placed him on lifetime probation for the other two.

Skinner filed a timely petition for post-conviction relief in which he presented a number of claims based on newly discovered evidence regarding a relationship between the victim and "Wallace," a California police officer. The victim initially disclosed the offenses alleged against Skinner to her mother while living with her mother in California. Wallace was a police officer in that same California community who assisted in the initial investigation of the case. Wallace interviewed the victim, set up a confrontation call between the victim and Skinner at the request of Yavapai County law enforcement, instructed the victim on what she should and should not do during the call and was present when the victim made the call.

Documents Skinner submitted with his petition for post-conviction relief established that the victim and Wallace were involved in a sexual relationship shortly after trial. The documents also suggested that this sexual relationship began before Skinner's trial. Once Wallace's supervisors discovered the sexual relationship, Wallace resigned from his job and was

arrested. California authorities filed a criminal complaint against Wallace, alleging he committed "unlawful sexual intercourse" between January 1, 2010 and January 9, 2011. A California court refused to provide Skinner with a copy of the document used to charge Wallace. Wallace was, however, ultimately convicted of an unidentified felony offense and placed on three years' probation. While the parties knew shortly before Skinner's trial that the victim and Wallace were living together, the State represented that the victim had begun to live with Wallace only because the victim had befriended Wallace's minor daughter and the victim's mother agreed she could live with Wallace and his daughter. Wallace did not testify at trial.

The superior court summarily dismissed Skinner's petition. The court found the evidence was not newly discovered because the State had disclosed the victim and Wallace's living arrangement prior to trial, the court addressed the relevance of the information prior to trial and there was no evidence the prosecutor had more information than was disclosed to Skinner. The court also found the evidence was "not material in a way that would likely change the verdict" and that the evidence would not have been relevant for anything more than impeachment.

See *State v. Bilke*, 162 Ariz. 51, 52-53, 781 P.2d 28 (1989) (to be entitled to post-conviction relief based on newly discovered evidence, petitioner must present evidence that is relevant and offered not simply for impeachment).

We grant review and relief. First, the issue is not the fact that the victim and Wallace were living together, which Skinner knew before trial, but that the victim was involved in an illegal sexual relationship with Wallace, possibly before trial, which apparently no one but the victim and Wallace knew until months after trial. Absent an evidentiary hearing, under these circumstances, it is not clear that an illegal sexual relationship between the minor victim and an investigating officer that may have existed before and/or during trial is so inconsequential that it would not have affected the verdicts or sentences, or that it would have served only as impeachment evidence.

A colorable claim is "one that, if the allegations are true, might have changed the outcome" of the proceedings. *State v. Runnigeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993). A defendant who presents a colorable claim is entitled to an evidentiary hearing. *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). Skinner presented colorable claims for

relief based on newly discovered evidence. He was, therefore, entitled to an evidentiary hearing.

For these reasons, and without expressing any view of the ultimate merits of Skinner's petition,

IT IS ORDERED granting review and relief of Skinner's petition in CR2012-0614 and remanding for further proceedings consistent with this decision order, including an evidentiary hearing on Skinner's claims for relief based on newly discovered evidence.

IT IS FURTHER ORDERED staying the appeal in CR2011-0585 to and including August 5, 2013. On August 6, 2013, the appeal in CR2011-0585 shall be automatically dismissed unless prior thereto Skinner files a notice of reinstatement of the appeal or a motion to continue the stay. The issuance of this stay does not constitute any expression of opinion on the merits of the appeal.

IT IS FURTHER ORDERED that the Clerk of the Yavapai County Superior Court transmit to this court, within five days after entry, a copy of any order or minute entry issued as a result of the remand in CR2012-0614.

/S/ _____
SAMUEL A. THUMMA, Presiding Judge