

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

DUANE HANNAN, *Petitioner*.

No. 1 CA-CR 15-0340 PRPC
FILED 3-7-2017

Petition for Review from the Superior Court in Navajo County

No. S0900CR201300392

S0900CR201300725

The Honorable Ralph E. Hatch, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Navajo County Attorney's Office, Holbrook

By Galen Wilkes

Counsel for Respondent

Duane Hannan, Florence

Petitioner

STATE v. HANNAN
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Samuel A. Thumma delivered the decision of the Court, in which Chief Judge Michael J. Brown and Judge Patricia A. Orozco¹ joined.

T H U M M A, Judge:

¶1 Petitioner Duane Hannan seeks review of the superior court's order denying his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32.1 (2017).² Absent an abuse of discretion or error of law, this court will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577 ¶ 19 (2012). Finding no such error, this court grants review but denies relief.

¶2 In CR201300392, Hannan pled guilty to one count of sexual conduct with a minor under 15 years of age, and in CR201300725 he pled guilty to one count of attempted child molestation, both dangerous crimes against children. The superior court sentenced Hannan to the presumptive term of 20 years in prison for the sexual conduct with a minor conviction, and placed him on lifetime probation for the attempted child molestation conviction, to be served after his release from prison. Hannan sought post-conviction relief in both cases, which the superior court denied. This timely petition for review followed.

¶3 As he did in superior court, Hannan argues he was entitled to post-conviction relief because the State failed to disclose recorded police interviews of the victims, the State engaged in prosecutorial misconduct when letters written to Hannan from the victims were confiscated from his

¹ The Honorable Patricia A. Orozco, Retired Judge of the Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

² Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

STATE v. HANNAN
Decision of the Court

jail cell while he was awaiting trial and he summarily asserts that his trial attorney coerced him into pleading guilty.³

¶4 Hannan's first two claims are waived. By accepting the State's plea offer, Hannan expressly waived "any and all motions, defenses, objections or requests that he has made or raised, or could assert hereafter, to the court's entry of judgment against him." As a matter of law, a plea agreement waives all non-jurisdictional defects that occurred before the plea was entered. *See State v. Hamilton*, 142 Ariz. 91, 94 (1984). The waiver of non-jurisdictional defects includes purported deprivations of constitutional rights. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

¶5 Even if not waived, Hannan's claims nonetheless fail. The record reveals that the State complied with its pre-trial discovery obligations, including disclosing the recordings of victim interviews and statements. And Hannan cites no authority for the proposition that, during Rule 32 proceedings, a petitioner is entitled to disclosure of possible trial evidence. *See Canion v. Cole*, 210 Ariz. 598, 599 ¶ 9 (2005) ("Rule 15 applies only to the trial stage, not to PCR proceedings."). Hannan's claim regarding the "confiscation" of letters from his jail cell also is unavailing. The superior court disposed of this argument based, alternatively, on waiver and Hannan's lack of a reasonable expectation of privacy in the letters. *See State v. Jeffers*, 135 Ariz. 404, 413-14 (1983) ("Prison officials may inspect and examine the communications of inmates without depriving them of their constitutional rights[, and] no rule requires them to close their eyes to what they discover therein."). Hannan does not argue that the court's conclusion is incorrect. *See Ariz. R. Crim. P. 32.9(c)(1)* (noting petition for review shall contain "[t]he reasons why the petition should be granted").

¶6 Finally, Hannan provides no authority or factual basis from the record to support his cursory assertion that his trial counsel coerced him to plead guilty. *See id.* (noting petition for review shall contain "[t]he facts material to a consideration of the issues presented"). The court denied relief on this claim based on the court's personal observation of Hannan and his counsel at the change of plea hearing and found Hannan "was truthful when he told the Court that no one had 'applied any force or threats to coerce' him to plead guilty." Hannan has not shown this credibility-based

³ Hannan raised issues in his petition for PCR that he does not raise in his petition for review, meaning they will not be considered by this court. *State v. Vera*, 235 Ariz. 571, 573 ¶ 8 (App. 2014).

STATE v. HANNAN
Decision of the Court

decision was in error. *See State v. Fritz*, 157 Ariz. 139, 141 (App. 1988) (credibility determination rests solely with trial judge).

¶7 For these reasons, this court grants review but denies relief.



AMY M. WOOD • Clerk of the Court
FILED: AA