

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JEFFREY HOWARD PRITCHERT, *Petitioner*.

No. 1 CA-CR 15-0719 PRPC
FILED 4-27-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2005-111198-001 SE
The Honorable Justin Beresky, Judge, *Pro Tempore*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By David R. Cole
Counsel for Respondent

Jeffrey Howard Pritchert, Florence
Petitioner

STATE v. PRITCHERT
Decision of the Court

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kent E. Cattani joined.

K E S S L E R, Judge:

¶1 Jeffrey Howard Pritchert petitions for review from the dismissal of his petition for post-conviction relief following a probation violation admission. In 2006, Pritchert entered a plea to thirty-seven counts consisting of public display of explicit sexual materials, public sexual indecency, possession of dangerous drugs, and possession of drug paraphernalia. The superior court sentenced Pritchert to an aggravated term of seven years' imprisonment with a three-year probation tail. In 2013, Pritchert violated the terms of his probation. The trial court reinstated his probation terms. Less than a year later, in 2014, Pritchert violated his probation terms again. For the second time Pritchert admitted violating his probation terms and the court sentenced him to serve two consecutive one-year sentences. Pritchert seeks post-conviction relief from this sentence.¹

¶2 On review, Pritchert raises five issues: 1. Trial counsel provided ineffective assistance at the probation revocation and disposition hearing by failing to provide mitigating information and testimony;² 2.

¹ Following Pritchert's filing of a notice of post-conviction relief, the superior court appointed post-conviction relief counsel. Counsel reviewed the record and was unable to find any claims for relief to be raised in post-conviction relief proceedings.

² Pritchert complains that his trial attorney failed to present to the court eight documents which he only refers to but does not submit in either his petition for post-conviction relief or petition for review: 1. A neurological evaluation report; 2. A social history evaluation report; 3. A psychiatrist evaluation report; 4. A mental health history report; 5. Medical records reports and evaluations; 6. A psychological evaluation report; 7. An expert's report and evaluation on his state of mind which caused him to violate the terms of his probation, and drug and alcohol evaluation reports; 8. An assessment screening profile.

STATE v. PRITCHERT
Decision of the Court

Pritchert's constitutional right to effective assistance of counsel was violated; 3. Appellate counsel provided ineffective assistance on post-conviction relief by failing to file a petition alleging ineffective assistance of trial counsel; 4. The trial court abused its discretion by denying Pritchert's petition for post-conviction relief and failing to hold an evidentiary hearing; and 5. The court abused its discretion when it imposed consecutive sentences of imprisonment.

¶3 Regarding the claims of ineffective assistance of counsel, Pritchert fails to provide any supporting documentation to give the court a basis upon which to make a finding of deficient representation by either counsel. Instead, Pritchert asserts that the trial court ought to have compelled trial counsel to produce the unspecified documents Pritchert believes support his claims. Further, Pritchert believes that appellate counsel should have requested said unidentified documents from trial counsel. Pritchert's complaint is neither based in fact nor law. The court views allegations in a petition for review in light of the entire record to determine if a claim is colorable. *State v. Lemieux*, 137 Ariz. 143, 146 (App. 1983). To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687; *State v. Nash*, 143 Ariz. 392, 397 (1985). If a defendant fails to make a sufficient showing on either prong of the *Strickland* test, the court need not determine whether the other prong was satisfied. *State v. Salazar*, 146 Ariz. 540, 541 (1985).

¶4 Pritchert's argument does not support a finding of performance below objectively reasonable standards by trial counsel. And, a review of the record demonstrates that trial counsel's performance was not deficient. Pre-admissions, the trial court reviewed Pritchert's constitutional rights and explained his possible sentence, including the fact that any prison sentences could be ordered to be served consecutively to each other. The court proceeded to disposition and noted that trial counsel had filed numerous letters of support on Pritchert's behalf. Counsel presented two members of Pritchert's family to address the court. Pritchert then addressed the court himself and requested that he be sentenced to the Department of Corrections. Pritchert stated that he wished to take advantage of the treatment programs offered by the Department of Corrections and that he wished to "pay [his] debt to the [sic] society" and that he needed to "get [his] act together and straighten up." Pritchert himself made no mention of any of the mental health or addiction issues now raised. Counsel concluded by making a candid statement and recommendation to the court based on his discussion with Pritchert. He

STATE v. PRITCHERT
Decision of the Court

emphasized Pritchert's willingness to engage in therapy and rehabilitative programming and recommended that Pritchert serve a total of one year in prison. Counsel argued that the state's request for two consecutive years was too harsh.

¶5 It is not enough to incorporate by reference any issue or argument. A petition for review must set forth specific claims, present sufficient argument supported by legal authority and include citation to the record. Ariz. R. Crim. P. 32.9(c)(1)(iv) (stating petition must contain "[t]he reasons why the petition should be granted" and either an appendix or "specific references to the record," but "shall not incorporate any document by reference, except the appendices"); Ariz. R. Crim. P. 32.9(c)(1)(ii) (providing petition must state "the issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review"); *State v. Rodriguez*, 227 Ariz. 58, 61, ¶ 12 n.4 (App. 2010) (declining to address argument not presented in petition). Pritchert argues that both counsel provided deficient representation but the record indicates otherwise. Trial counsel advocated for Pritchert and post-conviction relief counsel could not identify any colorable claims to substantiate filing a petition for post-conviction relief. There is no evidence to indicate that Pritchert should or would have received a lesser sentence based on documentation he failed to incorporate into the record. Pritchert has failed to set forth colorable claims of ineffective assistance of counsel against both trial and appellate counsel in accordance with the rules of criminal procedure. With regard to Pritchert's claim that the superior court abused its discretion when it dismissed his petition without holding an evidentiary hearing, the trial court need not conduct an evidentiary hearing based on mere generalizations and unsubstantiated claims of ineffective assistance of counsel. *State v. Borbon*, 146 Ariz. 392, 399 (1985).

¶6 Finally, regarding the imposition of consecutive one-year sentences, while the trial court did not explicitly justify the sentences imposed, no findings of aggravation or mitigation are required for the imposition of a presumptive sentence. *State v. Johnson*, 210 Ariz. 438, 441, ¶ 11 n.1 (App.2005); *State v. Risco*, 147 Ariz. 607, 610 (App. 1985). The sentences imposed were to presumptive terms and they were appropriately stacked because the sentences arose from two separate incidents with distinct dates and locations.³ Further, the record indicates that counsel

³ Pritchert pled guilty to Count 34 of the indictment which he admitted occurred on or about April 5, 2005, on Main Street in Mesa, Arizona, as well as Count 35, which took place on April 12, 2005, on Gilbert Road, in Mesa, Arizona.

STATE v. PRITCHERT
Decision of the Court

attempted to mitigate Pritchert's sentence by presenting letters and statements to the court by family members in support of Pritchert. He also argued against a consecutive sentence. There is no evidence to indicate that counsel could have done anything to change the court's sentencing order.

¶7 For the foregoing reasons, we grant review but deny relief.



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