

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DAVID MARK BUOT, *Petitioner*.

No. 1 CA-CR 15-0782 PRPC
FILED 9-26-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2011-104792-001
The Honorable Jay R. Adelman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Susan L. Luder
Counsel for Respondent

David Mark Buot, Buckeye
Petitioner

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MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kenton D. Jones and Chief Judge Samuel A. Thumma joined.

D O W N I E, Judge:

¶1 David Mark Buot petitions for review from the summary dismissal of his first petition for post-conviction relief. For the reasons stated below, we grant review but deny relief.

¶2 A jury found Buot guilty of second degree murder. The superior court sentenced him to 22 years' imprisonment, and this Court affirmed his conviction and sentence on direct appeal. *State v. Buot*, 232 Ariz. 432 (2013). In his petition for review, Buot argues the evidence was insufficient to support his conviction, various jury instructions were inadequate, and the superior court failed to adequately address his competency. We deny relief on these issues because Buot could have raised them on direct appeal. Any claim a defendant could have raised on direct appeal is precluded. Ariz. R. Crim. P. 32.2(a)(1). None of the exceptions under Rule 32.2(b) apply here.

¶3 Buot also argues his trial counsel was ineffective by failing to object to final jury instructions that identified the elements of second degree murder and defined the terms "intentionally," "with intent to," "knowingly," and "recklessly." We deny relief because the challenged instructions tracked the language of the applicable statutes as applied to a charge of second degree murder. *See* Ariz. Rev. Stat. ("A.R.S.") §§ 13-1104 (elements of second degree murder), 13-105(10)(a)-(c) (definitions of "intentionally" or "with the intent to," "knowingly," and "recklessly"). For these same reasons, we deny relief as to Buot's claim that appellate counsel should have challenged these same instructions on direct appeal.

¶4 Finally, Buot argues his trial counsel was ineffective by allegedly informing him that he could receive no more than 16 years in prison if convicted at trial. Buot claims he did not otherwise know that he faced up to 22 years in prison. *See* A.R.S. § 13-710 (sentences for second

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degree murder).¹ 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 (1984); *State v. Nash*, 143 Ariz. 392, 397 (1985).

¶5 We deny relief because the record demonstrates that Buot was aware of the full sentence range he faced if convicted. Buot participated in a settlement conference at which the State offered to stipulate to the presumptive term of 16 years' imprisonment if Buot pled guilty. During discussion of that offer, on the record, both the court and the State explained to Buot the full sentence range he faced if convicted at trial, including the fact he could receive 22 years' imprisonment. The court also explained how the State could allege aggravating factors in an attempt to obtain an aggravated sentence of 22 years. Buot declined the State's offer. Under these circumstances, Buot has failed to present a colorable claim of ineffective assistance of counsel.

CONCLUSION

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



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

¹ A.R.S. § 13-710 has since been amended to increase the maximum terms of imprisonment. See A.R.S. § 13-710 (2012).