

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

HARVEY RAY ROPER, *Petitioner*.

No. 1 CA-CR 15-0852 PRPC  
FILED 10-5-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2012-117023-001  
No. CR2012-124245-001  
The Honorable Cynthia Bailey, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Gerald R. Grant  
*Counsel for Respondent*

Harvey Ray Roper, Tucson  
*Petitioner*

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**MEMORANDUM DECISION**

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Peter B. Swann joined.

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**T H U M M A**, Chief Judge:

¶1 Petitioner Harvey Ray Roper 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).<sup>1</sup> 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). Because Roper has shown no such error, this court grants review but denies relief.

¶2 In December 2012, in CR2012-117023, Roper pled guilty to: (1) misconduct involving weapons, a Class 4 non-dangerous but repetitive offense (with two prior felony convictions) and (2) two counts of criminal trespass in the first degree, each Class 1 misdemeanors. Also in December 2012, in CR2012-124245, Roper pled guilty to (1) misconduct involving weapons, a Class 4 non-dangerous, non-repetitive offense, and (2) two counts of threatening or intimidating, each Class 6 non-dangerous, non-repetitive offenses.

¶3 Roper then moved to withdraw his pleas, claiming his former counsel coerced him into entering the pleas and that he did not understand his pleas. The superior court denied the motion. Based on the report of a behavioral health expert appointed to examine him, Roper renewed his motion to withdraw claiming he misunderstood the pleas given cognitive limitations. After being provided additional material, Roper's new counsel withdrew the motion to withdraw from the plea agreements. The superior court sentenced Roper to a presumptive 10-year prison term in CR2012-117023, to be followed by a three-year supervised probation grant in CR2012-124245.

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<sup>1</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

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¶4 Roper filed a timely notice of post-conviction relief. After his appointed counsel was unable to find any colorable claims for relief, Roper filed a pro se petition alleging claims of manifest injustice for his guilty pleas and ineffective assistance of counsel. Ruling that the petition presented no basis for relief, the superior court summarily dismissed the proceeding. This timely petition for review followed.

¶5 Summary dismissal of a petition for post-conviction relief is appropriate “[i]f the court . . . determines that no . . . claim presents a material issue of fact or law which would entitle the defendant to relief under this rule and that no purpose would be served by any further proceedings.” Ariz. R. Crim. P. 32.6(c). “[A] petition that fails to state a colorable claim may be dismissed without an evidentiary hearing.” *State v. Kolmann*, 239 Ariz. 157, 160 ¶ 8 (2016). A colorable claim is one that, if the allegations are true, would probably have changed the outcome. *State v. Amaral*, 239 Ariz. 217, 220 ¶ 11 (2016). In determining whether a claim is colorable, the allegations are viewed in the light of the entire record. *State v. Lemieux*, 137 Ariz. 143, 146 (App. 1983).

¶6 In claiming that his cognitive limitations constitute manifest injustice that should allow him to withdraw his pleas, Roper states his mental condition limited his ability to understand the nature of the plea proceedings. Roper, however, does not allege, with any specificity, what he now claims he did not understand. At the plea hearing, the superior court went over the terms of the pleas with Roper and Roper told the court he understood them. The fact Roper has been diagnosed with cognitive limitations does not render him incompetent to plead guilty; the diagnosis of a mental disease or disorder does not mean a defendant is unable to make rational decisions about his case. *State v. Harding*, 137 Ariz. 278, 286 (1983). The superior court could reasonably find from the court’s interaction with Roper at the plea hearing that he fully understood the terms of the plea.

¶7 There was likewise no abuse of discretion in ruling that Roper failed to state a colorable claim of ineffective assistance of counsel. While Roper alleges his counsel coerced him into pleading guilty and made false statements on which he relied, Roper again offers no specifics. The superior court need not conduct an evidentiary hearing based on generalizations and unsubstantiated claims of ineffective assistance of counsel. *State v. Borbon*, 146 Ariz. 392, 399-400 (1985). Moreover, the court asked Roper at the plea hearing whether his guilty pleas were the result of any threats or promises not reflected by the pleas and Roper told the court they were not. “A defendant must not tell the judge that his plea is entered into voluntarily if it is not.” *State v. Hamilton*, 142 Ariz. 91, 93 (1984). On this record, the

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superior court did not err in summarily dismissing Roper's petition for post-conviction relief.

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



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