

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

ALAN DONATO FELICIANO, *Petitioner*.

No. 1 CA-CR 16-0359 PRPC  
FILED 10-24-2017

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Petition for Review from the Superior Court in Maricopa County  
No. CR2015-030184-001  
The Honorable Daniel J. Kiley, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Maricopa County Attorney's Office, Phoenix  
By Adena J. Astrowsky  
*Counsel for Respondent*

Alan Donato Feliciano, Phoenix  
*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.

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DOWNIE, Judge:

¶1 Alan Donato Feliciano petitions for review from the dismissal of his petition for post-conviction relief filed pursuant to Arizona Rule of Criminal Procedure (“Rule”) 32. We have considered the petition for review, response, and reply, and, for the reasons stated, grant review but deny relief.

¶2 Feliciano pled guilty to taking the identity of another, a class 4 felony. *See* Ariz. Rev. Stat. (“A.R.S.”) § 13-2008. Abiding by the parties’ stipulation in the plea agreement, the superior court placed Feliciano on supervised probation, a term of which was one year in jail.<sup>1</sup>

¶3 Feliciano timely commenced post-conviction relief proceedings, arguing his sentence was illegal because he was not tried within the time limits prescribed in the Interstate Agreement on Detainers Act (IAD). He also mentioned ineffective assistance of counsel in his “notice of request for post-conviction relief” and in his reply.<sup>2</sup> After briefing, the superior court summarily dismissed the petition, and this timely petition for review followed. We review for an abuse of discretion. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012). “We may affirm on any basis supported by the record.” *State v. Robinson*, 153 Ariz. 191, 199 (1987).

¶4 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). To be entitled to an evidentiary hearing, a petitioner must present a colorable claim. *State v. Krum*, 183 Ariz. 288, 292 (1995). 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 light of the entire record. *State v. Lemieux*, 137 Ariz. 143, 146 (App. 1983).

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<sup>1</sup> Probation was ordered to run concurrent with his probation in CR2008-0109364. Incarceration in the county jail was ordered to begin upon his physical release from prison in CR2008-168232-001.

<sup>2</sup> Feliciano contends he raised the ineffective assistance of counsel issue in his petition by describing how his then-counsel advised him that his IAD argument was “moot.”

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¶5 Feliciano contends he received ineffective assistance of counsel because his lawyer told him he “could not find . . . meritable [sic] evidence to support” a claim that the State violated the IAD. He further contends defense counsel claimed he did not know about the IAD documentation, but it was part of the file Feliciano belatedly received from his lawyer. But for this ineffective assistance, he asserts, he would not have been prosecuted and received an “illegal sentence, even if [he] agreed to it.”

¶6 “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, 567, ¶ 21 (2006). In addressing the sufficiency of counsel’s performance, there is a “strong presumption” that counsel “provided effective assistance,” *State v. Febles*, 210 Ariz. 589, 596, ¶ 20 (App. 2005), which the defendant must overcome by demonstrating that counsel’s conduct did not comport with prevailing professional norms. *See State v. Herrera*, 183 Ariz. 642, 647 (App. 1995).

¶7 The IAD, which is codified at A.R.S. § 31-481, provides the mechanism by which prisoners incarcerated out of state are transferred to Arizona to face charges. *State v. Almy*, 216 Ariz. 41, 42, ¶ 2 (App. 2007). Assuming proper and timely paperwork is filed, an Arizona prosecutor would have to commence trial of the prisoner within 180 days or the court must dismiss with prejudice. *Id.* at ¶ 3; A.R.S. § 31-481, art. V(c).

¶8 The State originally filed the § 13-2008 charge against Feliciano in 2010. In 2014, when Feliciano – then incarcerated in Nevada on federal and Arizona convictions – learned of the charge, he filed a “Motion to Initiate the Interstate Agreement on Detainers Act” in Maricopa County. The State moved to dismiss the 2010 charge without prejudice because it had decided not to extradite Feliciano and instead would refile the charge when Feliciano was released from the Nevada prison. The court granted this unopposed motion.

¶9 When the State refiled the charge in 2015, Feliciano was incarcerated in the Arizona prison system. The IAD thus did not apply, and Feliciano did not in fact have a “meritable [sic] claim,” as he alleges his counsel told him, because Feliciano was not incarcerated out of state. *See* A.R.S. § 31-481, art. III(a) (“Whenever a person has entered upon a term of imprisonment in . . . a party state, and whenever during the continuance of the term of imprisonment there is pending *in any other party state* any untried indictment information or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial

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within one hundred eighty days . . .”) (emphasis added); *Almly*, 216 Ariz. at 42, ¶ 2 (“The IAD . . . provide[s] uniform standards for transferring prisoners incarcerated in one state . . . to a different state where there are outstanding charges pending against the prisoner . . .”).

¶10 Even assuming the IAD in some way applied to the 2015 prosecution, Feliciano has no cognizable claim for ineffective assistance of counsel because he was representing himself at the time he changed his plea to guilty.<sup>3</sup> See *State v. Russell*, 175 Ariz. 529, 534 (App. 1993) (“[A]fter waiving his right to counsel at trial, the defendant has no constitutionally protected right to challenge the advice or services provided by advisory counsel.”). And while representing himself, Feliciano waived any purported IAD violation by the terms of his plea agreement. See *State v. Gourdin*, 156 Ariz. 337, 338 (App. 1988). He expressly waived “any and all motions, defenses, objections, or requests which he has made or raised, or could assert hereafter, to the court’s entry of judgment against him and imposition of a sentence upon him.” (Emphasis added.)

¶11 The superior court did not abuse its discretion by dismissing Feliciano’s Rule 32 petition. We therefore grant review but deny relief.



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

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<sup>3</sup> Feliciano’s advisory counsel signed the plea agreement as “counsel,” but Feliciano clearly stated at the change-of-plea hearing, which occurred the same day as the plea agreement was dated, that he was representing himself.