

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ULF OLOF HOLGERSSON, *Petitioner*.

No. 1 CA-CR 16-0695 PRPC
FILED 12-21-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2014-001803-001
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Ulf Olof Holgersson, Sweden
Petitioner

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in
which Judge Jon W. Thompson and Judge Jennifer M. Perkins joined.

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JONES, Judge:

¶1 Ulf Olof Holgersson petitions this court for review from the dismissal of his of-right petition for post-conviction relief filed pursuant to Arizona Rule of Criminal Procedure (Rule) 32. We have considered the petition for review and, for the following reason, grant review and deny relief.

¶2 Holgersson, a Swedish citizen and permanent resident of the United States, pled guilty to an amended count of theft, a class 6 designated felony (Count 3), and one count of fraudulent schemes and artifices, a class 2 felony (Count 4). Count 3 carried a presumptive sentence of one year, and Count 4 carried a presumptive sentence of five years. Probation was available for both counts. The trial court placed Holgersson on concurrent probation terms, and for Count 3, imposed a one-year jail term as a condition of probation. As for restitution, Holgersson agreed the victims suffered an economic loss of \$576,000.

¶3 Holgersson timely sought post-conviction relief. He raised a claim of ineffective assistance of counsel (IAC), arguing counsel failed to argue for a jail term of less than 365 days and failed to advise the trial court of the consequences a 365-day jail sentence would have on Holgersson's immigration status. According to Holgersson, a one-year term of incarceration subjected him to deportation under federal law. The superior court denied the Rule 32 petition, and Holgersson timely seeks review. We review for an abuse of discretion. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012) (citing *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006)).

¶4 Holgersson asserts "defense counsel had an absolute duty to advocate for a sentence that helps [Holgersson] avoid deportation." Holgersson implies the trial court was unaware that a 365-day jail sentence would subject him to deportation and argues he is entitled to be resentenced to, at most, a 364-day jail term. Holgersson speculates that had counsel argued for less jail time, and made the court aware of the adverse immigration consequences of a one-year term, the court would have imposed at most 364 days of jail.

¶5 To state a colorable IAC claim, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient performance resulted in prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397-98, (1985) (adopting the *Strickland* test).

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¶6 Holgersson’s IAC claim fails for several reasons. First, his assertion that defense counsel did not advocate for a jail term of less than one year for the Count 3 conviction is belied by the record. Second, Holgersson provides no authority for the proposition that a lawyer has a duty to inform *the court* of a sentence’s deportation consequence. *Cf. Padilla v. Kentucky*, 559 U.S. 356, 368-69 (2010) (finding deficiency in defense counsel’s representation where statute clearly called for mandatory deportation as a consequence of client’s conviction, and counsel assured defendant that conviction would not result in removal from the United States).

¶7 More fundamentally, however, Holgersson’s argument fails because it is premised upon an overly narrow reading of the federal statute relating to deportable aliens. According to that statute, “[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable.” 8 U.S.C. § 1227(a)(2)(A)(iii).¹ Holgersson relies solely upon the following definition of aggravated felony: “The term ‘aggravated felony’ means a theft offense . . . for which the term of imprisonment [is] at least one year.” 8 U.S.C. § 1101(a)(43)(G). But a one-year prison term for a theft conviction is not the only definition that applies in this case. “Aggravated felony” also means “an offense that . . . involves fraud or deceit in which the loss to the victim or victims exceeds \$10,000.” 8 U.S.C. § 1101(a)(43)(M)(i). Thus, Holgersson’s conviction for Count 4, which involved fraud and loss to the victims of over \$500,000, also subjected Holgersson to deportation. As a result, even if counsel improperly failed to advise the court of the deportation consequences resulting from Holgersson’s sentence for Count 3, Holgersson fails to show any resulting prejudice.²

¶8 For the foregoing reasons, Holgersson cannot establish that defense counsel’s performance was deficient and resulted in prejudice. The superior court did not abuse its discretion in summarily denying the IAC claim.

¹ Absent material changes from the relevant date, we cite a statute’s current version.

² We are not persuaded by Holgersson’s argument, based upon *Moncrieffe v. Holder*, 569 U.S. 184 (2013), that for purposes of a deportation proceeding, a court would not consider the facts of this case to determine whether Holgersson had been convicted of a fraud that caused the loss to the victims of more than \$10,000.

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¶9

Accordingly, we grant review and deny relief.