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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ERIC RAY ALDAVA, *Petitioner*.

No. 1 CA-CR 16-0611 PRPC
FILED 1-16-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2014-002623-001
The Honorable Teresa A. Sanders, Judge

REVIEW GRANTED; RELIEF DENIED

APPEARANCES

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

Eric Ray Aldava, Florence
Petitioner

MEMORANDUM DECISION

Presiding Judge James P. Beene delivered the decision of the Court, in
which Judge Randall M. Howe and Judge Kent E. Cattani joined.

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B E E N E, Judge:

¶1 Eric Ray Aldava (“Aldava”) 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 and, for the reasons stated, grant review but deny relief.

FACTS AND PROCEDURAL HISTORY

¶2 Aldava pleaded guilty to manslaughter and leaving the scene of a fatal accident. The plea provided for a stipulated sentence of 12 years on the manslaughter charge and supervised probation on the charge of leaving the scene of a fatal accident. The State’s allegations of prior felony convictions were dismissed. The underlying charges arose from a motor vehicle accident where Aldava ran a red light and struck a golf cart, killing the driver. On April 17, 2015, Aldava was sentenced in accordance with the plea to a term of 12 years in prison and 5 years of intensive probation. He signed the Notice of Rights form, which notified him of the filing deadlines for any notice of post-conviction relief proceeding.

¶3 In May 2016, Aldava filed a Notice of Post-Conviction Relief alleging claims pursuant to Rule 32.1. The court dismissed the notice as untimely by over 10 months, and found that Aldava had not asserted substantive claims or adequately explained the reason for his failure to file a timely notice. Aldava filed a Motion for Rehearing claiming that he was not aware that he needed to include evidence in his notice of post-conviction relief. He claimed that he had located his uncle who would testify that he left the scene of the accident as he feared for his safety and that his uncle reminded him that he had consumed a 24-ounce beer prior to returning to the scene. Aldava attached the following to the Motion for Rehearing:

1. Aldava’s affidavit asserting that he was forced to plead guilty, the police failed to take his uncle’s statement at the scene, his lawyer was ineffective for failing to locate the uncle and failing to get the uncle’s statement, he left the scene of the accident because he felt threatened, and he consumed two beers after the accident;
2. The sheriff’s report;
3. Aldava’s uncle’s affidavit stating it was difficult for Aldava to contact him because he went to Colorado after the accident to work with a family member, Aldava had

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consumed a beer before returning to the scene, Aldava had trouble with his brakes, and Aldava left the scene because he was afraid;

4. Aldava's step-father's affidavit stating that there were people yelling at Aldava at the scene of the accident; and
5. A portion of the psychological report, which was used in the mitigation report.

¶4 The superior court found that the information set forth in Aldava's motion did not constitute newly discovered material facts and denied the motion. Aldava filed a timely petition for review.

DISCUSSION

¶5 In his petition for review, Aldava claims that material evidence had come to light that he consumed an alcoholic drink after the accident but before the preliminary breath test was administered. He claims this invalidates the blood alcohol reading and that he therefore cannot be guilty of manslaughter. To avoid dismissal of his claims as untimely, he alleges that he has newly discovered evidence that will show he is innocent, despite his guilty plea, of both manslaughter and leaving the scene of a fatal accident.

¶6 As an initial matter, by entering a guilty plea to the charges of manslaughter and leaving the scene of a fatal accident, Aldava has waived the challenge he now seeks to assert here. *See State v. Reed*, 121 Ariz. 547, 548 (App. 1979) ("It is well established in Arizona that an appellant waives any challenges to non-jurisdictional defects in the trial court proceedings when he enters a valid guilty plea."). Moreover, Aldava does not dispute the validity of his guilty plea. The record reveals he knowingly and voluntarily entered the plea, *see State v. Cutler*, 121 Ariz. 328, 329 (1979), and admitted to facts sufficient to support a conviction, *see State v. Salinas*, 181 Ariz. 104, 106 (1994) (factual basis must exist supporting guilty plea and "can be established by 'strong evidence' of guilt and does not require a finding of guilt beyond a reasonable doubt."). Accordingly, Aldava is precluded from raising this argument on post-conviction relief.

¶7 Nevertheless, because the superior court addressed the merits of Aldava's motion based on newly discovered evidence, we do the same. Absent an abuse of discretion or error of law, we will not disturb a superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012). On review, Aldava bears the burden of

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establishing error. *State v. Poblete*, 227 Ariz. 537, 538, ¶ 1 (App. 2011). We find that Aldava has failed to carry his burden.

¶8 When a defendant seeks to present issues in an untimely post-conviction relief proceeding, the defendant must set forth those issues in the notice of post-conviction relief and present “meritorious reasons” that substantiate the claims. Ariz. R. Crim. P. 32.2(b). The notice must also explain why the defendant did not raise those issues in a timely manner. *Id.* If the notice fails to do these things, “the notice shall be summarily dismissed.” *Id.*

¶9 To avoid dismissal, Aldava attempts to establish that he has newly discovered material facts. Had he proceeded to trial, Aldava could establish a colorable claim of newly discovered evidence by showing the evidence existed at the time of trial, he exercised diligence in presenting his claim, and the evidence is not merely cumulative or impeaching, but relevant and, if known, would have changed the outcome of trial. *See State v. Bilke*, 162 Ariz. 52, 52-53 (1989); Ariz. R. Crim. P. 32.1(e).

¶10 Aldava claims that he recently located his uncle who would testify that Aldava consumed two beers, or 24 ounces of beer, after the accident and prior to the police obtaining his blood alcohol level – a fact which Aldava claims to have forgotten. He alleges he now knows that it was the two forgotten beers he consumed after the accident that caused his blood alcohol level to register on the tests and resulted in the odor of alcohol on his breath. Therefore, Aldava claims he cannot be guilty of manslaughter.

¶11 The sheriff’s report, attached to his petition, indicates that Aldava was asked if he had consumed any alcohol before returning to the scene. Aldava stated no, but admitted to consuming two beers approximately five hours before the accident. His eyes were bloodshot and watery, and the officer could smell a faint odor of an intoxicating beverage. He failed the field sobriety test, given approximately two hours after the accident. It is unlikely that Aldava was unaware that he consumed alcoholic beverages prior to returning to the scene of the accident and he offers no explanation for his memory lapse. Further, Aldava provides insufficient evidence of due diligence in locating his uncle. Although his uncle had moved to Colorado, he was working with a family member and Aldava admits he told his attorney that the uncle was a potential witness.

¶12 Aldava also provided the affidavit of his step-father, who corroborates his claim that he left the scene of the accident because he was

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afraid of the decedent's father. But Aldava was aware of his reason for leaving the scene at the time of the accident and his step-father's affidavit offers nothing new. It is merely cumulative. Moreover, Arizona law provides no exception to the requirement that a driver remain at the scene of a severe injury or fatal accident. *See* Ariz. Rev. Stat. § 28-661. The reason Aldava left is irrelevant.

¶13 More importantly, it is unlikely that anything offered by Aldava would change the outcome. A review of the record indicates that Aldava had been drinking earlier in the day, signs of impairment were noted during the field sobriety test approximately two hours after the accident, he ran a red light, and he left the scene of a fatal accident. The State indicated its expert would testify that at the time of the accident, Aldava's blood alcohol level was between .072 and .117. As stated above, he knowingly and voluntarily entered the guilty plea, and admitted to facts supporting the conviction. And Aldava was sentenced according to the plea agreement. Even though he now disputes the factual basis for the plea, the record provides adequate support. *See State v. Soddors*, 130 Ariz. 23, 25 (1981). Neither the fact that he left the scene of the accident because he was afraid, nor the fact that he consumed alcohol after the accident negates the basis of his guilty plea to manslaughter and leaving the scene of a fatal accident.

¶14 Aldava's notice of post-conviction review was untimely and he has failed to present meritorious reasons substantiating his claim of newly discovered evidence. The superior court did not abuse its discretion in summarily dismissing the notice of post-conviction relief.

CONCLUSION

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



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