

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

GEOFFREY CODD, *Petitioner*.

No. 1 CA-CR 16-0632 PRPC
FILED 4-26-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2013-419083-001
The Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Lisa Marie Martin
Counsel for Respondent

Geoffrey Codd, San Luis
Petitioner

MEMORANDUM DECISION

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

STATE v. CODD
Decision of the Court

C A T T A N I, Judge:

¶1 Geoffrey Codd petitions for review from the superior court's dismissal of his of-right petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Codd pleaded guilty to two counts of aggravated assault. The offenses were committed against Codd's brother-in-law and against Codd's elderly father. The superior court found that one of the assaults was a dangerous offense and sentenced Codd to 10 years' imprisonment for that offense and to 5 years' probation for the other offense. After post-conviction counsel filed a notice of completion noting that she had not found any colorable claims for relief, Codd filed a *pro se* petition asserting claims of ineffective assistance of counsel, induced guilty plea, and illegal sentence. The State responded, acknowledging that the superior court improperly considered the elements of the offense as aggravating factors, but urging the court to deny relief if it found that the same sentence would have been imposed absent the improper considerations. The State asserted that the remaining claims were not colorable. The superior court summarily dismissed the petition "[f]or the reasons stated in the Response."

¶3 Codd reiterates his claims in his petition for review. We review the superior court's ruling on a petition for post-conviction relief for an abuse of discretion. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012).

¶4 Codd argues that his sentence was illegal because the superior court improperly considered elements of his aggravated assault charge as aggravating factors. But resentencing is only required if the court would not have imposed the same sentence absent the sentencing error. *State v. Pena*, 209 Ariz. 503, 509, ¶ 24 (App. 2005). And here, after considering the State's concession of error, the superior court rejected Codd's claim, effectively finding that it would have imposed the same sentence even without considering the elements of the offense as aggravating circumstances. Because there were other aggravating circumstances (the conduct was cruel and brutal, multiple blows were inflicted, and one of the victims was over 65 years of age), the superior court did not abuse its discretion by rejecting Codd's claim for relief.

¶5 Codd also argues that his counsel was ineffective because he did not negotiate a better plea deal, failed to apprise Codd of his sentencing exposure, and failed to present mitigation evidence at sentencing. To prevail on a claim of ineffective assistance of counsel, Codd must show that

STATE v. CODD
Decision of the Court

counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397 (1985). If a defendant fails to demonstrate either prong of the *Strickland* test, the superior court need not consider the other prong. *State v. Salazar*, 146 Ariz. 540, 541 (1985).

¶6 Codd's argument relating to counsel's failure to object to the presentation of improper aggravating circumstances fails based on the reasoning set forth above relating to Codd's illegal sentence claim; the court's conclusion that it would have imposed the same sentence even without the improperly considered aggravating circumstances means that Codd could not establish prejudice resulting from counsel's allegedly deficient performance. *See Strickland*, 466 U.S. at 694 (prejudice requires a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different").

¶7 Codd's arguments relating to his plea and the presentation of mitigation evidence are similarly unavailing. At the plea hearing, Codd expressed his understanding and consent to all terms contained in the plea agreement, including the range of sentences he faced. The plea allowed him to present mitigation evidence at sentencing, and counsel submitted a mitigation report, as well as letters solicited on Codd's behalf, and urged the court to impose a mitigated sentence. Accordingly, Codd has not presented a colorable claim that counsel performed deficiently.

¶8 Finally, Codd asserts that counsel did not return unused funds to him after the conclusion of the trial. But this claim is not cognizable under Rule 32 of the Arizona Rules of Criminal Procedure, so the superior court did not abuse its discretion by summarily dismissing it.

¶9 Accordingly, we grant review but deny relief.



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