

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JERROLD DAVIS, *Petitioner*.

No. 1 CA-CR 16-0700 PRPC
FILED 1-16-2018

Petition for Review from the Superior Court in Coconino County
No. CR2013-00490
The Honorable Dan R. Slayton, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Coconino County Attorney's Office, Flagstaff
By Eric Ruchensky
Counsel for Respondent

Coconino County Public Defender's Office, Flagstaff
By Kara Sagi
Counsel for Petitioner

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MEMORANDUM DECISION

Chief Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Jennifer B. Campbell joined.

T H U M M A, Chief Judge:

¶1 Petitioner Jerrold Davis 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).¹ 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 Davis has shown no such error, this court grants review but denies relief.

¶2 In June 2013, Davis was indicted on two counts of aggravated driving under the influence (DUI), each a Class 4 felony, alleged to have occurred in December 2012. After absconding for a period of time, Davis pled guilty to one count of DUI, a Class 1 misdemeanor, and one count of endangerment, a Class 6 designated felony. The plea agreement stated Davis was probation eligible and required him to pay specified fines, fees and assessments.

¶3 At sentencing, Davis told the court he was “looking forward to just continuing to pay my fines up and normal, standard citizen, take care of what I can take care of.” Davis was then placed on standard probation for three years and, without objection, ordered to pay the specified fines, fees and assessments.

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

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¶4 After the court issued these orders, Davis' counsel stated that, under the DUI statute, "defendants are able to comply with the fines by doing community service as opposed to making monetary payments." She asked whether the court was willing to consider allowing Davis to perform community restitution in lieu of making payments. She did not indicate that Davis was unable to pay. A discussion followed, indicating the statute applied to municipal and justice courts, and the court ultimately requested "a little more legal ground" before deciding.

¶5 Davis then moved to reconsider, asking that he be allowed to complete community restitution in lieu of making payments. As applicable here, by statute

Notwithstanding any other law, *in a municipal or justice court*, if a defendant is sentenced to pay a fine, a fee, assessment or incarceration costs *and the court finds the defendant is unable to pay* all or part of the fine, fee, assessment or incarceration costs, the court *may order* the defendant to perform community restitution in lieu of the payment for all or part of the fine, fee, assessment or incarceration costs.

A.R.S. § 13-824 (emphasis added). Davis argued that A.R.S. § 13-824 was a special law prohibited by the Arizona Constitution and a violation of equal protection, as it did not allow defendants convicted of misdemeanors in superior court the same opportunity to perform community service in lieu of monetary payment as those in justice and municipal courts. The court denied the motion stating: "Please review A.R.S. § 13-824. This action is available only for city/justice courts."

¶6 Davis filed a timely notice for post-conviction relief. His petition alleged that his sentence was in violation of the United States Constitution's equal protection clause and the Arizona Constitution's prohibition against special laws. The State filed a response, noting the convictions were for both misdemeanor DUI and felony endangerment and that the court correctly applied A.R.S. § 13-824. The court denied the petition for post-conviction review, stating it "ha[d] not been presented with sufficient legal basis to over[]turn a state statute."

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¶7 In his petition for review, Davis now makes the same arguments. This court need not address the constitutionality of A.R.S. § 13-824 here. “Courts should decide cases on nonconstitutional grounds if possible, avoiding resolution of constitutional issues, when other principles of law are controlling and the case can be decided without ruling on the constitutional questions.” *Fragoso v. Fell*, 210 Ariz. 427, 430 ¶ 6 (App. 2005) (quoting *In re United States Currency of \$315,900.00*, 183 Ariz. 208, 211 (App. 1995)); see also *State v. Korzuch*, 186 Ariz. 190, 195 (1996).

¶8 Davis pled guilty and the consequences imposed were authorized by law and consistent with the plea agreement. See A.R.S. § 28-1381. Davis does not argue that the court could not legally impose the financial consequences outlined in the plea agreement or that they were not lawful. Instead, Davis argues he is entitled to substitute performance of community service to satisfy the payment obligations imposed, despite statutory language to the contrary.

¶9 The court found that Davis knowingly, intelligently and voluntarily entered into the plea agreement, which includes the payment obligations, and he does not argue otherwise. The decision not to allow Davis to substitute performance of community restitution for payment obligations was not an abuse of discretion nor did it subject Davis to an illegal sentence. Davis is not automatically entitled to perform community service in lieu of monetary payments associated with his misdemeanor DUI. Davis did not request community service in lieu of payment before the sentence was imposed and he personally acknowledged that he wanted to pay what he owed at the sentencing hearing.

¶10 Even if A.R.S. § 13-824 applied to defendants who were convicted of misdemeanors in superior court, or if this case originated in municipal or justice courts (where the statute clearly applies), the statute is discretionary upon a defendant’s showing an inability to pay. Davis has provided nothing to indicate that he cannot pay the financial consequences imposed. Establishing an inability to pay is a prerequisite to the exercise of the court’s discretion pursuant to A.R.S. § 13-824 and he has not made that necessary factual showing.

¶11 Davis was placed on probation, in accordance with the plea agreement, as authorized by law. See A.R.S. § 12-1381. The consequences imposed were not in violation of the Constitution of the United States or the State of Arizona. See Ariz. R. Crim. P. 32.1(a). While this is not the basis upon which the superior court dismissed Davis’ petition, this court may

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affirm a result on any ground supported by the record. *State v. Wassenaar*, 215 Ariz. 565, 577 ¶ 50 (App. 2007).

¶12 Davis has not shown the superior court abused its discretion in dismissing his petition for post-conviction relief. Accordingly, this court grants review but denies relief.



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