

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DEEANDRE MOORE, *Petitioner*.

No. 1 CA-CR 16-0740 PRPC
FILED 1-9-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2013-005001-001
The Honorable Pamela S. Gates, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Amanda M. Parker
Counsel for Respondent

Deeandre Moore, San Luis
Petitioner

MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding
Judge Paul J. McMurdie and Chief Judge Samuel A. Thumma joined.

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S W A N N, Judge:

¶1 Deeandre Moore petitions this court for review from the dismissal of his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Moore pled guilty to one count of possession or use of dangerous drugs (methamphetamine) with two historical prior felony convictions, and the court imposed a mitigated prison sentence of 8.5 years, to be served concurrent with the sentence in one of the historical cases.

¶3 Moore timely filed a notice of post-conviction relief and filed a petition arguing that the superior court should set aside the plea agreement based on a “miscarriage of justice.” Moore raised multiple claims related to his arrest, indictment, and the prosecutor’s pre-agreement conduct. He also claimed ineffective assistance of trial counsel, arguing that counsel suppressed evidence regarding a forgery charge, failed to secure probation for Moore under A.R.S. § 13-901.01 (commonly known as “Proposition 200”), and failed to ensure that the plea agreement stated Moore’s correct name. He did not claim that the plea agreement itself was invalid.

¶4 The superior court summarily dismissed the petition, holding that by pleading guilty Moore waived all non-jurisdictional claims, including alleged violations of constitutional rights. The court further concluded that Moore had failed to show ineffective assistance of counsel. The court found that Moore was not convicted of the forgery charge, was ineligible for probation under A.R.S. § 13-901.01(H)(4), and set forth an “uncomprehensible” argument regarding his name. Moore petitions this court for review, re-alleging the claims he advanced in the superior court and raising new claims.

¶5 We will not reverse the superior court’s denial of post-conviction relief unless the defendant shows a clear abuse of discretion. *State v. Poblete*, 227 Ariz. 537, 538, ¶ 1 (App. 2011). We discern no abuse of discretion here. First, the superior court correctly held that Moore waived all non-jurisdictional defenses by accepting the plea agreement. *See State v. Reed*, 121 Ariz. 547, 548 (App. 1979). Next, the superior court correctly held that Moore failed to present a colorable claim of ineffective assistance of counsel. To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel’s performance fell below objectively reasonable standards and that the deficient performance prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 687–96 (1984). Moore’s claims of

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ineffective assistance of counsel were based on a dismissed charge and a statute for which he was ineligible. He therefore did not show either deficient performance or prejudice. Finally, we do not address the claims that Moore raises for the first time in his petition to this court. A petition for review may not present issues not first presented to the trial court. *State v. Bortz*, 169 Ariz. 575, 577 (App. 1991); Ariz. R. Crim. P. 32.9(c)(1)(ii); *see also State v. Swoopes*, 216 Ariz. 390, 403, ¶ 42 (App. 2007) (holding that there is no review for fundamental error in a post-conviction relief proceeding).

¶6 Accordingly, we grant review but deny relief.



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