

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

RILEY L. KMIECIK, *Petitioner*.

No. 1 CA-CR 16-0880 PRPC  
FILED 1-30-2018

---

Petition for Review from the Superior Court in Maricopa County  
No. CR2015-152435-001  
The Honorable Cynthia L. Gialketsis, Judge *Pro Tempore*

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

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

Riley L. Kmiecik, Eloy  
*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. KMIECIK  
Decision of the Court

C A T T A N I, Judge:

¶1 Riley L. Kmiecik 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 Kmiecik pleaded guilty to possession or use of dangerous drugs, a class 4 felony, and was sentenced to 2.5 years in prison. After post-conviction counsel found no colorable claim for relief and filed a notice of completion, Kmiecik filed a pro se petition for post-conviction relief, asserting his plea was not knowing, voluntary, and intelligent because his counsel did not inform him of the possibility of filing a motion to suppress the evidence that led to his conviction. And in a nearly identical claim, he argued ineffective assistance of plea counsel for not informing him of the same potential Fourth Amendment challenge. The superior court summarily dismissed the petition, ruling that neither of Kmiecik's arguments stated a colorable claim for relief.

¶3 Kmiecik reiterates his claims in his petition for review. He supplements his petition with new documentation, including his own affidavit. But because the supplements were not presented to the superior court, we will not consider them. *See State v. Martinez*, 134 Ariz. 119, 120 (App. 1982).

¶4 Summary dismissal of a petition for post-conviction relief is only appropriate if the court determines that the petition fails to state a claim for relief that, if the allegations are true, would probably have changed the outcome – or in other words, if it fails to state a colorable claim. Ariz. R. Crim. P. 32.6(d)(1); *State v. Amaral*, 239 Ariz. 217, 220, ¶ 11 (2016). We review the superior court's ruling on a petition for post-conviction relief for abuse of discretion. *State v. Gutierrez*, 229 Ariz. 573, 576–77, ¶ 19 (2012).

¶5 A defendant's decision to plead guilty must be voluntary, knowing, and intelligent. *Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *State v. Brown*, 212 Ariz. 225, 229, ¶ 15 (2006). Here, Kmiecik did not state a colorable claim that his plea was involuntary. During the plea colloquy, Kmiecik responded to questions regarding the plea agreement and indicated that he read and understood the rights he was waiving. Accordingly, the post-conviction court did not abuse its discretion by finding that Kmiecik had waived his right to assert a potential Fourth Amendment violation and that the plea was knowingly, intelligently, and voluntarily made. *See State v. Hamilton*, 142 Ariz. 91, 92–93 (1984).

STATE v. KMIETIK  
Decision of the Court

¶6 A plea may be determined to be involuntary if the defendant's decision to plead guilty resulted from ineffective assistance of counsel. *Hill v. Lockhart*, 474 U.S. 52, 56–57 (1985). To prevail on an ineffective assistance of counsel claim in this context, the defendant must show both that counsel's performance fell below objectively reasonable standards and that counsel's deficient performance prejudiced the defendant. *Id.*; *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Lemieux*, 137 Ariz. 143, 146 (App. 1983). To show prejudice, a defendant must establish a "reasonable probability that but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. A plea will be found involuntary only if a defendant lacked information of "true importance in the decision-making process." *State v. Pac*, 165 Ariz. 294, 295–96 (1990) (citation omitted).

¶7 Kmiecik's ineffective assistance of counsel claim fails. Kmiecik provided only conclusory allegations, with only an unsworn release questionnaire in support of his claim. Because Kmiecik did not attach anything to his original petition to support his contention that his plea was involuntary or that his counsel performed deficiently, the court did not abuse its discretion by dismissing the petition. *See* Ariz. R. Crim. P. 32.5(d) ("The defendant must attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the petition's allegations."). Furthermore, based on the limited evidence available—that Kmiecik was arrested in or near his car on suspicion of shoplifting—the superior court reasonably found that Kmiecik's counsel could have concluded that Kmiecik did not have a viable Fourth Amendment claim because police searched his car as part of a valid inventory search before towing it. *See State v. Schutte*, 117 Ariz. 482, 486 (App. 1977). Thus Kmiecik's claim fails.

¶8 Kmiecik also asserts that he did not receive either an advisement under *State v. Donald*, 198 Ariz. 406 (App. 2000), or a settlement conference, but he does not explain how the advisement or settlement conference would have affected his decision to accept the plea. The superior court's summary dismissal does not specifically address these arguments, but because they are based on the same allegations as Kmiecik's voluntariness claim, the same analysis applies.

STATE v. KMIECIK  
Decision of the Court

¶9

Accordingly, we grant review but deny relief.



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