

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MICHAEL ANTHONY VENERABLE, *Petitioner*.

No. 1 CA-CR 17-0650 PRPC
FILED 5-15-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2015-142190-001
The Honorable Brian Kaiser, Judge *Pro Tempore*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By E. Catherine Leisch
Counsel for Respondent

Law Offices of David A. Black P.L.L.C., Phoenix
By David Black, William H. Wynn
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge James B. Morse Jr. joined.

JONES, Judge:

¶1 Michael Venerable petitions this Court for review from the dismissal of his petition for post-conviction relief, filed pursuant to Arizona Rule of Criminal Procedure 32. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 On August 23, 2016, Venerable pleaded guilty to one count of sale of marijuana and waived his preliminary hearing. Per the plea agreement, he would serve at least 2.5 years in prison. The State agreed to dismiss the allegations that the offense was committed while he was on felony probation and that he had prior historical felony convictions. A charge of possession of drug paraphernalia was also dismissed. Venerable was sentenced in accordance with the plea agreement to the presumptive term of 2.5 years.

¶3 Venerable filed a timely Notice of Post-Conviction Relief and Petition for Post-Conviction Relief. He alleged his plea counsel was ineffective for failing to get a California undesignated felony charge reduced to a misdemeanor prior to advising him to enter a plea. Indeed, Venerable was later successful in reducing the undesignated felony to a misdemeanor, which was then dismissed. Venerable claimed he would not have pled guilty had he known the California charge could be reduced, thereby making him eligible for probation on the Arizona sale of marijuana charge. He requested the plea be set aside. After full briefing, the superior court dismissed the petition for relief finding counsel's performance did not fall below reasonable standards and Venerable had failed to show prejudice from any arguably deficient performance by counsel.

¶4 This timely Petition for Review followed. Venerable claims the superior court erred when it found counsel's performance was not deficient. Venerable also argues the court applied an improper standard of review when it determined that he suffered no prejudice. Absent an abuse of discretion, this Court will not disturb a superior court ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012)

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(citing *State v. Bennett*, 213 Ariz. 562, 566, ¶ 17 (2006)). An abuse of discretion occurs if the “court makes an error of law or fails to adequately investigate the facts necessary to support its decision.” *State v. Pandeli*, 242 Ariz. 175, 180, ¶ 4 (2017) (citing *State v. Wall*, 212 Ariz. 1, 3, ¶ 12 (2006)). On review, Venerable bears the burden of establishing error. See *State v. Poblete*, 227 Ariz. 537, 538, ¶ 1 (App. 2011).

¶5 Ineffective assistance of counsel must be a demonstrable reality rather than a matter of speculation. *State v. McDaniel*, 136 Ariz. 188, 198 (1983). Although Venerable filed a declaration, his declaration only generally avowed that he had retained an attorney to raise post-conviction issues, that all potential grounds for relief had been discussed, and that counsel had raised all grounds known within the petition. Venerable’s declaration makes no mention of the plea agreement and fails to assert he would not have taken the plea had he known it was possible to reduce his California felony to a misdemeanor. Moreover, Venerable did not support his claim of ineffective assistance of counsel with an affidavit or other documentation.

¶6 In its dismissal, the superior court issued a ruling that clearly identified, fully addressed, and correctly resolved the claims raised by Venerable in a thorough and well-reasoned manner that will allow any future court to understand the court’s rulings. Under these circumstances, we grant review, adopt the court’s reasoning, and deny relief. See *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993).



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