

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOHN MONROE CONLEY, *Petitioner*.

No. 1 CA-CR 18-0139 PRPC
FILED 8-7-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2015-109296-001
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

John Monroe Conley, Kingman
Petitioner

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which
Presiding Judge James B. Morse Jr. and Judge Lawrence F. Winthrop joined.

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CATTANI, Judge:

¶1 John Monroe Conley petitions for review of the superior court's ruling dismissing his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 Conley pleaded guilty to one count of possession of dangerous drugs with two prior felony convictions. The court sentenced him to the minimum term of 8 years in prison as stipulated in the plea agreement.

¶3 Conley timely filed a notice of post-conviction relief. After reviewing the record, appointed counsel found no viable claims. Conley then filed a pro per petition raising claims that (1) the judge was biased against him (and in effect violated his right to counsel) throughout the proceedings, (2) his counsel provided ineffective assistance during pretrial (non-plea) proceedings, and (3) his plea was involuntary. The superior court summarily denied the petition, and this petition for review followed. 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 Conley argues the court erred by finding that he was precluded from relief due to his guilty plea. But a guilty plea waives all non-jurisdictional defects that occurred before the plea. *See State v. Leyva*, 241 Ariz. 521, 527, ¶ 18 (App. 2017). This waiver includes alleged constitutional violations as well as all claims of ineffective assistance of counsel not directly related to entry of the plea. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *State v. Quick*, 177 Ariz. 314, 316 (App. 1993). Conley's claims of judicial bias and ineffective assistance of counsel are based entirely on prior rulings and performance unrelated to the ultimate plea proceedings, and thus are waived. Accordingly, the court did not err by finding Conley to be precluded from relief as to these claims. *See Ariz. R. Crim. P. 32.2(a)(3)* ("A defendant is precluded from relief under Rule 32 based on any ground: . . . waived at trial . . .").

¶5 Even assuming Conley's judicial bias claim relates to the plea proceedings, his claim is without merit. Conley relies only on the court's denial of his pre-plea motions as evidence of bias, but judicial rulings alone do not support a finding of bias or partiality without an additional showing of an extrajudicial source of bias or a deep-seated favoritism. *State v. Ellison*, 213 Ariz. 116, 129, ¶ 40 (2006); *see Liteky v. United States*, 510 U.S. 540, 555 (1994). And although Conley objects to having had the same judge who

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sentenced him also rule on his petition for post-conviction relief, Rule 32.4(f) expressly mandates assignment to the sentencing judge if possible.

¶6 Conley's claim of an involuntary plea was not waived because it was directed to the validity of the plea itself. Nevertheless, Conley's cursory and conclusory assertion that he was "bullied" and forced to take the plea "under pressure and duress" is not colorable. Conley advised the court at the change of plea hearing that no one had threatened or forced him to plead guilty. Absent compelling evidence undermining Conley's acknowledgement of voluntariness in open court, his statements to the court at a change of plea hearing are binding. *State v. Hamilton*, 142 Ariz. 91, 93 (1984).

¶7 Accordingly, we grant review but deny relief.



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