

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

GLENN RAY DENNIS, *Petitioner*.

No. 1 CA-CR 18-0244 PRPC
FILED 8-21-2018

Petition for Review from the Superior Court in Maricopa County
No. CR2016-115998-001
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Maricopa County Office of the Legal Advocate, Phoenix
By Frances J. Gray
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Randall M. Howe and Judge Jennifer M. Perkins joined.

S W A N N, Judge:

¶1 Glenn Ray Dennis petitions this court for review from the dismissal of his petition for post-conviction relief. For reasons that follow, we grant review and deny relief.

¶2 Dennis orally pled guilty to and was sentenced to prison for multiple drug, drug paraphernalia, and misconduct involving weapons offenses. We dismissed his direct appeal, in which he attempted to challenge the superior court's denials of pre-plea suppression and reconsideration motions. Dennis then petitioned for post-conviction relief, contending: (1) his plea was not knowing, intelligent, and voluntary; (2) his plea did not constitute waiver of the right to appeal erroneous suppression rulings; and (3) to the extent his plea did constitute waiver of the right to appeal, such waiver was caused by ineffective assistance of counsel. The superior court dismissed the petition. Dennis now petitions for review by this court.

¶3 The record demonstrates that at the settlement conference immediately preceding Dennis's guilty plea, his counsel advised him that a plea would carry "the risk that, depending on how a Court perceives this on appeal, that he may be waiving his direct . . . appeal rights" regarding the suppression rulings. The court then stated its belief that a plea certainly would waive those rights. Dennis indicated that he wished to proceed with a guilty plea, and the court conducted a colloquy adequate to secure Dennis's knowing, intelligent, and voluntary waiver of the right to trial. *See Boykin v. Alabama*, 395 U.S. 238, 243–44 (1969). During the colloquy, the court again specifically warned Dennis that it believed a plea would waive the right to appeal. Dennis indicated that he understood and that he wished to continue with the plea. On this record, Dennis is not entitled to relief based on his claim of involuntary plea.

¶4 Nor is Dennis correct that his plea enabled him to appeal the suppression rulings. By pleading guilty, he waived any deprivation of constitutional rights preceding the plea. *See Tollett v. Henderson*, 411 U.S.

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258, 267 (1973). That waiver included any appellate challenge to the suppression rulings. *See State v. Arnsberg*, 27 Ariz. App. 205, 206 (App. 1976). And because an “of right” petition for post-conviction relief is the equivalent of a direct appeal for a defendant who has pled guilty, Dennis has no greater rights to review of the suppression rulings in post-conviction relief proceedings. *See Montgomery v. Sheldon*, 181 Ariz. 256, 258 (1995), *superseded by statute on other grounds as recognized by State v. Smith*, 184 Ariz. 456, 459 (1996).

¶5 Finally, we reject Dennis’s contention that he is entitled to relief based on his trial counsel’s advice that a guilty plea might not result in waiver of appellate rights. To establish ineffective assistance of counsel, a defendant must show that his attorney’s performance fell below objectively reasonable standards and that he was prejudiced. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). To establish prejudice, the defendant must show that there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* at 694. If the defendant fails to make a sufficient showing on either prong of the *Strickland* test, the court need not determine whether the other prong was satisfied. *State v. Salazar*, 146 Ariz. 540, 541 (1985). Dennis made no sufficient showing of prejudice. The record demonstrates that Dennis decided to plead guilty even after being told multiple times that pleading guilty could result in waiver of the right to appeal the suppression rulings. Dennis was aware of the risk of waiver as well as the benefit of the plea, and he has not demonstrated that he would have proceeded differently had his trial counsel advised him that waiver was definite.

¶6 We grant review and deny relief.



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