

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KRISTINA MARIE BROWN, *Petitioner*.

No. 1 CA-CR 18-0442 PRPC
FILED 9-20-2018

Petition for Review from the Superior Court in Mohave County
No. S8015CR201501158
The Honorable Lee Frank Jantzen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Mohave County Attorney's Office, Kingman
By Matthew J. Smith
Counsel for Respondent

Janelle A. McEachern Attorney at Law, Chandler
By Janelle A. McEachern
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Jennifer B. Campbell delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge James P. Beene joined.

C A M P B E L L, Judge:

¶1 Kristina Marie Brown petitions this court for review from the dismissal of her 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 but deny relief.

BACKGROUND

¶2 As a result of Brown’s involvement in a drug trafficking organization, Brown eventually pleaded guilty to conspiracy to possess dangerous drugs, possess dangerous drugs for sale, transport for sale, import into this state or offer to transport for sale or import into this state, sell, transfer or offer to sell or transfer a dangerous drug (methamphetamine over a threshold amount); and possession of drug paraphernalia (methamphetamine). The superior court sentenced her to concurrent prison terms of five years and one year, respectively. Brown thereafter sought post-conviction relief, raising a claim of ineffective assistance of counsel (“IAC”). After conducting an evidentiary hearing, the superior court denied relief. This timely petition for review followed.

DISCUSSION

¶3 Brown argues counsel was ineffective for failing to secure a “free talk” with the prosecutor and for failing to advise her of the ramifications thereof before advising Brown to change her plea.¹ According

¹ At the evidentiary hearing, the prosecutor explained: “[A] free talk . . . means both sides come together. They discuss whether a defendant has anything that they know and is being fully and completely honest about their own activities, such that the State would become interested in using them in any capacity. . . [Free talks] are something that can lead to a different plea of [sic] resolution than would be normally available.”

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to Brown, she was “counting on the possibility of a free talk in order to gain either a probation eligible plea or a reduced sentence for cooperation.”

¶4 To be entitled to relief, Brown must show that counsel’s performance fell below objectively reasonable standards and that the deficient performance resulted in prejudice to the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397-98 (1985) (adopting the *Strickland* test).

¶5 Brown fails to establish both *Strickland* prongs because her claim of IAC rests on the faulty premise that the prosecutor was willing to participate in a free talk. The prosecutor testified at the evidentiary hearing that she had the sole discretion to grant a free talk, and she chose not to engage in one with Brown because Brown had indicated she had “very reduced contact [with the drug trafficking organization] and very little information to give me.” The prosecutor further explained:

I already had two testifying informants who had cooperated in the building of the case, and I had someone who was involved at basically every level of the conspiracy to testify about his involvement, and so my need for Ms. Brown by the time that there was even a discussion or an offer by Ms. Brown that she would do a free talk with me, the value of her doing a free talk was slim to none.

The record also reflects that, despite the prosecutor’s refusal to grant Brown a free talk, Brown’s counsel persisted in requesting one.

¶6 Finally, the record establishes Brown knew her guilty plea could result in either a prison sentence or supervised probation. Her counsel testified at the evidentiary hearing that she advised Brown a prison sentence would be the probable end result in signing the plea agreement. The plea agreement Brown signed and reviewed with the court clearly indicated the court had discretion at sentencing to impose a prison term. The record also shows Brown accepted the possibility of prison knowing a free talk was not forthcoming.

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CONCLUSION

¶7 Substantial evidence supports the superior court's dismissal order. *See State v. Sasak*, 178 Ariz. 182, 186 (App. 1993) (when trial court holds an evidentiary hearing, a reviewing court will affirm the trial court's ruling if it is based on substantial evidence). Accordingly, we grant review but deny relief.



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