

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

BRIAN WOOLSEY, *Petitioner*.

No. 1 CA-CR 20-0147 PRPC
FILED 12-15-2020

Petition for Review from the Superior Court in Maricopa County
No. CR2016-002059-001
The Honorable Warren J. Granville, Judge *Retired*

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Brain Woolsey, Florence
Petitioner

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Cynthia J. Bailey joined.

C A T T A N I, Judge:

¶1 Brian Woolsey petitions for review from the superior court's dismissal of his petition for post-conviction relief. For reasons that follow, we grant review but deny relief.

¶2 In 2017, Woolsey pleaded guilty to two counts of sexual conduct with a minor and two counts of attempted sexual conduct with a minor. Woolsey admitted two aggravating factors in the plea agreement: that his actions caused the victim emotional harm and that he engaged in a pattern of sexual abuse over a prolonged period of time. *See* A.R.S. § 13-701(D). Consistent with the plea agreement, the superior court sentenced Woolsey to consecutive sentences totaling 12 years' imprisonment, followed by lifetime probation.

¶3 Woolsey timely initiated post-conviction relief proceedings. After appointed counsel found no viable claims for relief, Woolsey filed a pro se petition. He asserted that (1) the State violated his Fourth Amendment rights by arresting him and gathering evidence without a warrant; (2) the State lacked sufficient evidence to prosecute him; and (3) his counsel was ineffective by failing to sufficiently challenging the State's evidence. After the State responded, the superior court summarily dismissed the petition. Woolsey then filed a motion for rehearing, which was also denied.

¶4 Woolsey petitioned for review, asserting grounds for relief based on the superior court failing to find a factual basis supporting the plea, defects in the indictment causing an involuntary plea, and general allegations of ineffective assistance of counsel. 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).

¶5 Before entering a guilty plea, the superior court must determine if a factual basis exists for each element of the crime. *State v. Salinas*, 181 Ariz. 104, 106 (1994). Here, the prosecutor detailed Woolsey's

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sexual relationship with a student at the high school where Woolsey worked. The sexual conduct (some of which was filmed), began when the student was 15 and continued for three years. Before entering the plea, Woolsey affirmed that the facts were true. Accordingly, there was ample evidence to support each element of the offenses.

¶6 Woolsey's assertions that his plea was coerced and that his counsel was ineffective are similarly unavailing. A pleading defendant waives "all non-jurisdictional defects and defenses, including claims of ineffective assistance of counsel, except those that relate to the validity of a plea." *State v. Banda*, 232 Ariz. 582, 585, ¶ 12 (App. 2013); *State v. Quick*, 177 Ariz. 314, 316 (App. 1993). To bring a colorable claim of ineffective assistance of counsel, a defendant must make more than vague and conclusory allegations. *See State v. Krum*, 183 Ariz. 288, 295 (1995). Here, Woolsey asserts that the indictment included charges that were not based in fact, which lead to a coerced plea. But by entering the plea, Woolsey waived any objection to the indictment, *see State v. Lerner*, 113 Ariz. 284, 285 (1976), and in any event, as stated above, there were sufficient facts to support the charges underlying Woolsey's plea. And the record shows that the superior court questioned Woolsey in accordance with *Boykin v. Alabama*, 395 U.S. 238 (1969), and his responses to those questions support a finding that he entered the plea knowingly and voluntarily. *See State v. Hamilton*, 142 Ariz. 91, 93 (1984). Finally, Woolsey makes only vague arguments that his counsel was ineffective by not challenging the indictment; he has not established that the alleged ineffective assistance related to his decision to plead guilty, and the superior court did not abuse its discretion by finding that Woolsey's conclusory allegations of ineffective assistance of counsel did not establish a colorable claim.

¶7 Woolsey also challenges the sentence imposed, asserting that the superior court incorrectly considered sexual conduct after the offense. The superior court may impose the maximum prison term if one or more statutory aggravating factors is admitted, *State v. Bonfiglio*, 231 Ariz. 371, 373, ¶ 8 (2013), and when a defendant pleads to an aggravating factor, the factor is established. *State v. Ring*, 204 Ariz. 534, 563, ¶ 93 (2003). And once an aggravating factor has been established, the court may consider other evidence that bears on whether the defendant should be shown leniency. *See State v. McGill*, 213 Ariz. 147, 156-57, ¶ 40 (2006). Here, Woolsey admitted two aggravating factors, including that he engaged in sexually inappropriate conduct over a prolonged period of time. *See A.R.S. § 13-701(D)*. Accordingly, the court did abuse its discretion or otherwise err by imposing an aggravated sentence.

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¶8

Accordingly, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
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