

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Respondent*,

*v.*

CASSIDY SAMUEL BUTLER, *Petitioner*.

No. 1 CA-CR 20-0440 PRPC  
FILED 7-27-2021

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Petition for Review from the Superior Court in Maricopa County  
No. CR2016-005319-001  
The Honorable Michael D. Gordon, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Cassidy Samuel Butler, San Luis  
*Petitioner*

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**MEMORANDUM DECISION**

Chief Judge Kent E. Cattani delivered the decision of the Court, in which  
Judge Samuel A. Thumma and Judge Brian Y. Furuya joined.

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C A T T A N I, Chief Judge:

¶1 Cassidy Samuel Butler petitions for review from the dismissal of his petition for post-conviction relief under Arizona Rule of Criminal Procedure 33. For reasons that follow, we grant review but deny relief.

¶2 Butler pleaded guilty to negligent homicide based on his involvement in a car accident where he was driving up to 44 miles per hour over the posted speed limit. The car struck another vehicle, killing someone inside. The superior court sentenced Butler as stipulated in the plea agreement to eight years' imprisonment.

¶3 Butler timely initiated post-conviction proceedings. After his appointed counsel found no viable claims, the superior court permitted Butler to file a *pro se* petition, in which he argued that the indictment was fraudulent, the victim was at fault, the plea agreement was improperly coerced, and his counsel provided ineffective assistance. The superior court summarily dismissed Butler's petition. This petition for review followed. We review the superior court's denial of post-conviction relief for an abuse of discretion. *State v. Roseberry*, 237 Ariz. 507, 508, ¶ 7 (2015).

¶4 Butler argues that the State failed to provide the grand jury with evidence of the victim's alleged failure to stop at a stop sign before entering the intersection, and that the victim's failure to stop was an intervening cause of the accident negating his criminal liability. But only a cause that is "unforeseeable and, with benefit of hindsight, abnormal or extraordinary" absolves a defendant from criminal liability. *State v. Bass*, 198 Ariz. 571, 576, ¶ 13 (2000) (citation omitted). Here, the victim's alleged failure to stop did not absolve Butler of liability for his excessive speed through the intersection. And given Butler's high rate of speed and failure to brake, the evidence supported both the original reckless manslaughter charge, *see* A.R.S. § 13-1103(A)(1), and the negligent homicide charge to which he pleaded guilty, *see* A.R.S. § 13-1102(A). Because evidence that the victim might have entered the intersection without stopping was not "clearly exculpatory," the State was not obligated to present that evidence to the grand jury. *See Trebus v. Davis*, 189 Ariz. 621, 625 (1997). And even assuming the evidence was exculpatory, Butler waived his challenge to the grand jury proceeding by pleading guilty. *See State v. Reed*, 121 Ariz. 547, 548 (App. 1979) (holding that the State's alleged failure to present exculpatory evidence to the grand jury is a non-jurisdictional defect waived by the defendant's guilty plea).

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¶5 Next, Butler asserts the prosecutor and settlement judge coerced him into pleading guilty by misrepresenting the law and by exaggerating the likely outcome were he to proceed to trial. But the record shows Butler entered the plea voluntarily. He did not enter the plea until a week after the settlement conference, at which point he unequivocally confirmed that he understood the nature of the plea and was entering it voluntarily. *See State v. Henry*, 114 Ariz. 494, 496 (1977).

¶6 Finally, Butler argues his counsel provided deficient representation by failing to address issues relating to the victim's fault, as well as by thwarting Butler's desire to withdraw his plea and by dissuading him from presenting mitigation at sentencing. A colorable claim of constitutionally ineffective assistance of counsel requires a showing "both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, 567, ¶ 21 (2006). Here, Butler's attorney (1) sought an extension to consider whether to challenge the indictment, (2) retained a forensic expert who contested aspects of the State's accident reconstruction and offered evidence that the victim's poor driving contributed to the collision, (3) sought the victim's cell phone records to determine whether the victim was distracted at the time of the collision, and (4) presented mitigating evidence and argued for a more lenient sentence based on those circumstances. The record shows Butler's counsel adequately pursued defenses to the charge against him, advised him on how the law applied to the facts of his case, and sought a more favorable sentence. And even assuming counsel was ineffective by failing to inform the superior court or the State of Butler's desire to withdraw his guilty plea, Butler failed to establish a "manifest injustice" that would support withdrawal of the plea. *See Ariz. R. Crim. P. 17.5; State v. Richardson*, 175 Ariz. 336, 339 (App. 1993); *State v. McKesson*, 27 Ariz. App. 500, 501-02 (App. 1976).

¶7 Accordingly, we grant review but deny relief.



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