

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

SEAN EARL JAGGERS, *Petitioner*.

No. 1 CA-CR 20-0472 PRPC  
FILED 4-27-2021

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Petition for Review from the Superior Court in Maricopa County  
No. CR2014-125831-001  
The Honorable Christine E. Mulleneaux, Judge *Pro Tempore*

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Sean Earl Jaggars, Eloy  
*Petitioner*

STATE v. JAGGERS  
Decision of the Court

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**MEMORANDUM DECISION**

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

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**T H U M M A**, Judge:

¶1 Sean Earl Jagers petitions this court for review from the dismissal of his petition for post-conviction relief filed pursuant to Arizona Rule of Criminal Procedure 33.1 (2021).<sup>1</sup> For the reasons that follow, the court grants review but denies relief.

¶2 Pursuant to an agreement with the State, Jagers pled guilty to burglary in the first degree. The court suspended imposition of sentence and placed him on a four-year term of probation. After Jagers committed another crime while on probation, the court sentenced him to a term of imprisonment for the new offense and placed him on intensive probation for the burglary conviction following his release from prison. In July 2018, Jagers started the term of intensive probation.

¶3 In April 2019, the State filed a petition to revoke probation, alleging Jagers failed to comply with various conditions. Jagers later admitted he violated probation by failing to report to his probation officer. Although the State apparently recommended reinstatement on probation, Jagers' probation officer asked the court to sentence Jagers to prison for the presumptive term. Jagers asked that he be reinstated on probation "one last time." He stated that "while he ha[d] missed certain drug tests, he ha[d] not been using;" he "never went without reporting every week" and had in fact reported "the very next day" after his admitted failure to report in the one instance; he "always held a job," including currently; he had "a good support system" and he had only "recently . . . mess[ed] up."

¶4 The court revoked probation and sentenced Jagers to the presumptive term of five years' imprisonment. Referring to the probation violation report, the court reasoned that Jagers was "not drug testing as directed" and was "continuing to consume alcoholic beverages, failing to

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<sup>1</sup> Absent material revisions after the relevant dates, statutes and rules cited refer to the current version unless otherwise indicated.

STATE v. JAGGERS  
Decision of the Court

abide by the directions of Probation, and failing to comply” with intensive probation requirements.

¶5 Jagers filed a notice of post-conviction relief, and the superior court appointed counsel to represent him. After Jagers’ attorney informed the court she could find no colorable claim to pursue, Jagers filed a pro se petition for post-conviction relief. Jagers argued his attorney had provided constitutionally ineffective assistance of counsel by meeting with Jagers only briefly before the disposition hearing and by failing to present mitigating evidence. After the State responded by disputing Jagers was entitled to relief, Jagers filed a reply in which he faulted his attorney for not informing him he could request a postponement of the disposition hearing to prepare mitigation. The court dismissed Jagers’ petition, noting that much of the purportedly mitigating evidence mentioned by Jagers was in fact presented to and considered by the court at the disposition.

¶6 In seeking review by this court, Jagers argues the superior court should have held an evidentiary hearing regarding his counsel’s failure to spend adequate time with him before the disposition hearing. Jagers also claims an evidentiary hearing was necessary to present evidence his counsel had failed to advise him he could seek a postponement of the hearing, in which event, defense counsel would have been able to obtain and present mitigating evidence including that Jagers was attending substance abuse counseling, held a job, and was taking mental health medications. The summary dismissal of Jagers’ petition for post-conviction relief is reviewed for an abuse of discretion. *State v. Kolmann*, 239 Ariz. 157, 160 ¶ 8 (2016).

¶7 To establish a colorable ineffective assistance claim, a petitioner “must show 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) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). “Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim.” *Id.*

¶8 Once Jagers admitted to violating probation, the court had broad discretion over whether to revoke probation and, if it did, what sentence to impose. *See* Ariz. R. Crim. P. 27.8(c)(2); *State v. Stotts*, 144 Ariz. 72, 87 (1985). The law generally provides that a first-time felony offender be

STATE v. JAGGERS  
Decision of the Court

sentenced to the presumptive prison term. A.R.S. § 13-702(A).<sup>2</sup> Even if Jagers' counsel erred by not conducting a more thorough investigation of mitigating facts or by not informing Jagers he could seek a continuance of the disposition hearing, Jagers does not establish a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different" -- in other words, he fails to show prejudice. *Bennett*, 213 Ariz. at 568 ¶ 25 (quoting *Strickland*, 466 U.S. at 694). Thus, the court did not abuse its discretion by denying relief.

¶9 As the superior court observed, the bulk of Jagers' proposed mitigating evidence was presented at the disposition hearing. Even though Jagers' probation record showed partial compliance with certain conditions and arguably recent improvement in some areas, the record also showed persistent noncompliance and regression in other areas. On the record presented, Jagers fails to show that more time with defense counsel, a postponement of the disposition hearing or further emphasis on his compliance with some of the probation requirements was reasonably likely to have resulted in a reinstatement of probation or a mitigated prison sentence.

¶10 For these reasons, the court grants review but denies relief.



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

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<sup>2</sup> Even though Jagers had a criminal history, the State did not allege any prior historical felony convictions and the plea agreement treated him as a first-time offender.