

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

TYRUS TWIST, *Petitioner*.

No. 1 CA-CR 21-0215 PRPC  
FILED 11-30-2021

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Petition for Review from the Superior Court in Yuma County  
No. S1400CR201800990  
The Honorable Brandon S. Kinsey, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Yuma County Attorney's Office, Yuma  
By Jon R. Smith  
*Counsel for Respondent*

Law Offices of Harriette P. Levitt, Tucson  
By Harriette P. Levitt  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Presiding Judge D. Steven Williams, Judge David B. Gass, and Judge James B. Morse Jr. delivered the decision of the court.

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**PER CURIAM:**

¶1 Tyrus Twist petitions this court for review from the dismissal of his petition for post-conviction relief. Twist argues the superior court erred when it denied his petition because he is an Indian who committed a crime in Indian country. We have considered the petition and grant review. Because reasonable evidence supports the superior court's denial of his petition, we affirm.

**FACTUAL AND PROCEDURAL HISTORY**

¶2 In 2018, one of Twist's friends called a cab service to pick up Twist and his girlfriend in Somerton, Arizona. The victim, a driver for the cab service, responded to the call and picked up the two. Part way through the ride, Twist told the victim to pull over on the side of U.S. Highway 95 and then shot the victim in the head. Twist took \$30 from the victim and then dumped his body on the side of the highway. Twist and his girlfriend drove away in the cab. A few days later, a civilian discovered the victim's body on the eastern side of Highway 95 and reported it to the police.

¶3 The State charged Twist with first-degree murder, conspiracy to commit first-degree murder, theft of means of transportation, and armed robbery. Twist pled guilty to second-degree murder and armed robbery and stipulated to consecutive prison terms totaling 37.5 years. Twist also stipulated to the factual basis for both crimes in the plea agreement. The superior court accepted the plea agreement, sentencing Twist accordingly.

¶4 Twist timely petitioned for post-conviction relief, arguing the superior court lacked subject matter jurisdiction because he is an Indian who committed a crime in Indian country, and, as such, his crime is subject to the federal government's exclusive jurisdiction. *See* Ariz. R. Crim. P. 33.1(b); *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2459 (2020); *State v. Verdugo*, 183 Ariz. 135, 137 (App. 1995). The superior court summarily dismissed Twist's petition, and this petition for review followed.

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ANALYSIS

¶5 Absent an abuse of discretion or error of law, this court will not disturb the superior court's ruling on a petition for post-conviction relief. *State v. Gutierrez*, 229 Ariz. 573, 577, ¶ 19 (2012).

¶6 "Summary dismissal is inappropriate when the petition presents a colorable claim." *State v. Wagstaff*, 161 Ariz. 66, 71 (App. 1988). This court will order an evidentiary hearing when a petitioner presents a colorable claim. *See State v. Watton*, 164 Ariz. 323, 328 (1990). A colorable claim "is a claim which, if [a petitioner's] allegations are true, might have changed the outcome." *See id.* On the other hand, this court will not order an evidentiary hearing when petitioners do not give the court doubt as to whether the superior court correctly decided their cases. *See id.* ("When doubts exist, a hearing should be held to allow the [petitioner] to raise the relevant issues, to resolve the matter, and to make a record for review." (internal quotation marks and citations omitted)). This court reviews a superior court's denial of a petition based on a lack of a colorable claim for an abuse of discretion. *State v. Amaral*, 239 Ariz. 217, 219, ¶ 9 (2016).

¶7 Twist argues the superior court erred by dismissing his petition because the crime occurred in Indian country—specifically, the Cocopah Indian Reservation at milepost 16 on Highway 95—and, as such, fell outside Arizona's jurisdiction. Because reasonable evidence supports a finding that the crime occurred outside Indian country, we disagree.

¶8 Arizona has subject matter jurisdiction over crimes committed within its territorial borders. *Verdugo*, 183 Ariz. at 137. This court presumes a homicide occurred where the victim's body is found. *See* A.R.S. § 13-108.B ("If the body of a homicide victim is found in this state it is presumed that the result occurred in this state."). The State, however, has no jurisdiction to prosecute crimes committed by Indians in Indian country. *Verdugo*, 183 Ariz. at 137 (citing 18 U.S.C. §§ 1152, 1153). The defendant bears the burden of establishing facts showing the State lacks jurisdiction. *Id.* at 137-38.

¶9 Here, the State met its initial jurisdictional burden when the indictment alleged the offenses occurred within Yuma County. During the change of plea hearing, Twist stipulated to that fact as a part of the factual basis, and the superior court found a factual basis existed to support the offenses. But Twist's stipulation and even the State's allegation concerning Twist's commission of the crime in Yuma County are not dispositive

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because both Somerton and the Cocopah Indian Reservation fall within Yuma County.

¶10 The State, however, provides evidence in the form of GPS coordinates showing the civilian found the victim's body on the side of the highway near milepost 16.3. We also note the State alleged the crimes occurred at milepost 16.3 during the grand jury proceedings. *See State v. Sadders*, 130 Ariz. 23, 25 (App. 1981) (holding the factual basis to support a plea may include the extended record, such as proceedings before the grand jury). Milepost 16.3 and the GPS coordinates are in Somerton, Arizona, not within the clearly-defined bounds of the Cocopah Indian Reservation. *See State v. Phillips*, 102 Ariz. 377, 380 (1967) (holding courts may take judicial notice of geographic facts).

¶11 Twist failed to counter the State with evidence or allegations to establish any doubt as to whether the crime occurred in Indian country. *See Wagstaff*, 161 Ariz. at 72 (holding a colorable claim existed when evidence supported statements in a third-party affidavit claiming the victim's grandmother coerced the victim into making false accusations against the criminal defendant). Twist only alleges the crime occurred near milepost 16 and within the Cocopah Indian Reservation and presents nothing else to support his claim. Twist, therefore, failed to counter sufficiently the State's evidence showing the crime occurred within Arizona's jurisdictional bounds.

¶12 Accordingly, the superior court did not abuse its discretion by denying Twist's petition.

CONCLUSION

¶13 We grant review and deny relief.



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