

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

DAVID A. BLANCO, *Petitioner*.

No. 1 CA-CR 22-0212 PRPC
FILED 11-15-2022

Petition for Review from the Superior Court in Maricopa County
No. CR2017-115913-001
The Honorable Geoffrey H. Fish, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Faith Cheree Klepper
Counsel for Respondent

Law Office of David G. Bednar, Flagstaff
By David G. Bednar
Counsel for Petitioner

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MEMORANDUM DECISION

Vice Chief Judge David B. Gass, Presiding Judge Samuel A. Thumma, and Judge Cynthia J. Bailey delivered the decision of the court.

PER CURIAM:

¶1 David A. Blanco seeks review of the superior court's dismissal of his Arizona Rule of Criminal Procedure 33 petition for post-conviction relief. This court has jurisdiction under article VI, section 9, of the Arizona Constitution, A.R.S. § 13-4239.C, and Ariz. R. Crim. P. 33.16. For the reasons stated, we grant review and deny relief.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Blanco exercised his right to a jury trial on three charges: (1) threatening or intimidating, a class 3 felony; (2) assisting a criminal street gang, a class 3 felony; and (3) assault, a class 3 misdemeanor. A jury found Blanco guilty of threatening or intimidating and assisting a criminal street gang but acquitted him of assault. The State proved two aggravating factors to the jury.

¶3 Following trial, issues arose resulting in the State and Blanco entering a plea agreement. Blanco pled guilty to the two counts on which the jury convicted him. The plea agreement stipulated to 5.5 years in prison on one count followed by supervised probation on the other. After informing Blanco of his constitutional rights, the superior court found Blanco established a factual basis and entered the plea knowingly, intelligently, and voluntarily. The superior court then sentenced Blanco according to the terms of the plea.

¶4 Blanco filed a timely notice of post-conviction relief. Blanco's counsel found no colorable claims. Blanco filed a *pro per* petition for post-conviction relief, and the State responded. The superior court summarily dismissed the petition and denied Blanco's motion for reconsideration. Blanco petitioned this court for review.

DISCUSSION

¶5 On review, Blanco claims the State violated his compulsory process clause rights under the Sixth Amendment by transporting a

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subpoenaed witness to the airport before he could recall her and after he requested the superior court retain her. Because he was unable to directly examine the witness, Blanco claims his plea was not knowing, intelligent, or voluntary. 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). We find no such error here.

¶6 Before accepting a guilty plea, the superior court must find the defendant entered the plea knowingly, intelligently, and voluntarily. *State v. Rose*, 297 Ariz. 500, 505, ¶ 13 (2013). To meet this standard, the superior court must find the defendant understands the charges, the sentencing conditions, and the constitutional rights the defendant must waive to enter the plea. Ariz. R. Crim. P. 17.2(a). The superior court also must find the defendant did not enter the plea as a result of force, threats, or promises outside the plea agreement. Ariz. R. Crim. P. 17.3. A defendant's plea is involuntary if the defendant lacks information material to the decision-making process. *State v. Pac*, 165 Ariz. 294, 295–96 (1990); see also *State v. Villegas*, 230 Ariz. 191, 192–93, ¶¶ 5–6 (App. 2012) (explaining reversible error occurs when the defendant would not have pled guilty but for the lack of information).

¶7 Blanco provides no evidence, such as an affidavit, showing the witness's unavailability influenced his decision to plead guilty. Though Blanco claims the defense's inability to recall the witness "detrimentally effected his bargaining position," he does not specify what testimony the witness could have offered on rebuttal to have such an effect.

¶8 At sentencing, the superior court confirmed Blanco understood he would waive certain constitutional rights—including his rights to confront and subpoena witnesses. Blanco affirmed his plea was voluntary, and he was neither forced nor threatened to enter the plea. See *State v. Hamilton*, 142 Ariz. 91, 93 (1984) (recognizing statements to court at a change of plea hearing about voluntariness normally bind the defendant). On this record, Blanco's plea was knowing, intelligent, and voluntary.

¶9 Further, by entering a plea agreement, Blanco waived all non-jurisdictional defects, "including deprivations of constitutional rights." *State v. Chavez*, 243 Ariz. 313, 318, ¶ 14 (App. 2017). Blanco, thus, waived his right to challenge a violation of his compulsory process rights. See *State v. Anderson*, 147 Ariz. 346, 350 (1985). Blanco also waives any claims of prosecutorial or judicial misconduct because those claims rely on finding a violation of his compulsory process rights—the only issue he raises for

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review. *See* Ariz. R. Crim. P. 33.16(c)(2)(B) (requiring a statement of issues). Blanco, thus, has not shown an abuse of discretion.

¶10 We grant review and deny relief.



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