NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. MIGUEL A. ARRIETA, Petitioner.	2 CA-CR 2012-0390-PR DEPARTMENT A <u>MEMORANDUM DECISION</u> Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20111046002

Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Barton & Storts, P.C.
By Brick P. Storts, III — Tucson
Attorneys for Petitioner

H O W A R D, Chief Judge.

¶1 Pursuant to a plea agreement, petitioner Miguel Arrieta was convicted in October 2011 of attempted armed robbery. In March 2012, the trial court revoked his probation in another matter and sentenced him to concurrent, presumptive sentences, the longer of which is 7.5 years. Arrieta then filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the court denied without conducting an

evidentiary hearing. This petition for review followed. We will not disturb the trial court's ruling unless it clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Arrieta argues that his guilty plea was not knowing, intelligent, and voluntary because he was not mentally competent to plead guilty when the change-of-plea hearing took place.[1] Arrieta also claims he is entitled to an evidentiary hearing. In the mental health section of the presentence report, the author noted that Arrieta had been diagnosed with attention deficit hyperactivity disorder in elementary school; he had been prescribed Ritalin; he "[t]hinks he was diagnosed with Bipolar Disorder in middle school"; he "[d]id not take medication as an adult"; he "[f]eels mentally stable"; and he was taking medication at the jail for anxiety and to help him sleep. The author also reported Arrieta "belatedly realized his decision to become involved [in the underlying offense] was 'stupid.'"

¶3 Arrieta attached as exhibits to his petition for post-conviction relief two psychiatric evaluations prepared in 1994 and 1998, when he was five and nine years old respectively. The 1994 report diagnosed him as having oppositional/defiant disorder and attention deficit disorder, and reported he was currently taking "imipramine." The 1998 evaluation reported he had been taking "Ritalin and Clonidine [as] of late," and

[1]Although Arrieta presented a claim of ineffective assistance of counsel related to another issue in his petition for post-conviction relief, he does not appear to claim counsel was ineffective for having failed to challenge his competency to plead guilty. Nor does he raise that other argument or any claim based on ineffective assistance of counsel on review.

documented Arrieta's admission of "auditory and visual hallucinations . . . as well as possible paranoid delusions."

¶4 The state attached as an exhibit to its response to the petition for post-conviction relief an email correspondence from Arrieta's trial attorney to the prosecutor dated August 1, 2012, in which defense counsel opined that during the time she represented Arrieta, she "did not witness[] any behaviors that indicated [Arrieta] was incompetent to either take a plea or go to trial," and that "[h]e appeared to understand his rights and trial strategies." She added that, "It seems to me that many people had contact with Mr. [Arrieta] during the course of my representation of him. No one, including myself, believed he had difficulty understanding the legal issues or was hearing voices or was having any significant mental health problem."

¶5 Arrieta claims the trial court erred by summarily denying relief because "a material issue of fact existed as to whether [he] was capable of making an informed decision to enter a change of plea in this case." More specifically, he asserts the court erroneously focused on facts "known to the court at the time of the change of plea," rather than facts presented in the petition for post-conviction relief. Arrieta argues the court was required, at the very least, to conduct an evidentiary hearing, presumably in light of the evidence contained in the two psychiatric evaluations. A defendant is entitled to a hearing only if he raises a colorable claim for relief, which is one that, if taken as true, likely would have changed the outcome of the case. *State v. Watton*, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990).

¶6 We review a trial court's determination that a defendant is competent to plead guilty for an abuse of discretion, and look for "'reasonable evidence'" to support the court's competency determination. *State v. Djerf*, 191 Ariz. 583, ¶ 35, 959 P.2d 1274, 1285 (1998), *quoting State v. Brewer*, 170 Ariz. 486, 495, 826 P.2d 783, 792 (1992). We view the evidence in the light most favorable to sustaining the court's finding. *State v. Bishop*, 162 Ariz. 103, 105, 781 P.2d 581, 583 (1989). Arrieta relies on very old historical medical reports that have marginal relevance to his competence at the time of the change of plea. Notably, the Rule 32 judge, who also presided over the change-of-plea and sentencing hearings, relied on her own observations of Arrieta at the change-of-plea hearing to conclude he "never wavered in affirming his understanding of his plea and his constitutional rights." And, although competency was not raised expressly, the court noted at sentencing it had reviewed the presentence report, which contained information about Arrieta's mental health history. Additionally, defense counsel stated at sentencing that Arrieta "has mental health issues which were treated in the jail." The record supports the court's finding that Arrieta's plea, entered in open court and in the presence of his attorney, was entered knowingly, voluntarily, and intelligently, and that he was competent to enter such a plea. *See* Ariz. R. Crim. P. 17.3 (court must personally advise defendant of rights waived by pleading guilty and determine plea voluntarily entered).

¶7 The trial court dismissed Arrieta's petition in a comprehensive, eight-page ruling that identified and correctly ruled on the argument now before us in a manner that will allow any future court to understand its resolution. We therefore approve and adopt

the court's ruling on the sole issue raised on review, and see no need to restate it in its entirety here. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). In addition, the court properly found that, because this claim was not a colorable claim meriting post-conviction relief, Arrieta was not entitled to an evidentiary hearing.

¶8 Therefore, review is granted but relief is denied.

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.