

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

FILED BY CLERK

MAY -8 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0091-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
BOBBIE BLAISE STILES,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MOHAVE COUNTY

Cause No. CR200900464

Honorable Steven F. Conn, Judge

REVIEW GRANTED; RELIEF DENIED

Matthew J. Smith, Mohave County Attorney

By Victoria Stazio

Kingman
Attorneys for Respondent

Jill L. Evans, Mohave County Appellate Defender

By Diane S. McCoy

Kingman
Attorneys for Petitioner

K E L L Y, Judge.

¶1 Petitioner Bobbie Stiles was charged with attempted child molestation, attempted sexual assault, and attempted sexual conduct with a minor, all charges

involving a minor under the age of fifteen. Pursuant to a plea agreement, he pled guilty to and was convicted of attempted sexual conduct with a minor under the age of fifteen, a class three felony and a dangerous crime against children. The trial court sentenced Stiles to a stipulated, presumptive prison term of ten years as required by the agreement. Stiles sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., raising claims of newly discovered evidence and ineffective assistance of counsel, and challenging the court's assessment of jury fees against him. The court vacated the jury-fees portion of the judgment of sentence but denied relief on the remaining claims. This petition for review followed. We will not disturb the trial court's ruling unless we find the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 Stiles asserted in his Rule 32 petition that he was entitled to relief pursuant to Rule 32.1(e) based on evidence that the thirteen-year-old victim had recanted her initial statements about having been sexually assaulted, making contrary statements to him and to another individual. Stiles also claimed he never was provided medical records that included the notes of a nurse who had examined the victim. The nurse had checked spaces in a form report reflecting she had not observed any injuries and had commented, "Questionable sexual assault no injuries noted." Stiles claimed counsel had been ineffective in failing to give him the nurse's report, asserting he would not have pled guilty had he received it. Additionally, he claimed counsel had told him witnesses who had seen him on top of the victim at a party with their pants pulled down had been served

with subpoenas and would testify against him at trial; he asserted this information was inaccurate because no subpoenas had been served. Stiles asserted counsel's deficient performance in failing to adequately investigate the charges and provide him with relevant information "prevented him from making an informed decision regarding the plea." As a result, he asserted, his plea was not knowing, voluntary, and intelligent, and he was entitled to relief under *Strickland v. Washington*, 466 U.S. 668 (1984).

¶3 In an eleven-page minute entry, the trial court denied Stiles's Rule 32 petition after identifying correctly and addressing thoroughly the claims Stiles had raised in a manner that has permitted this court to review the ruling and the basis for the court's determination that Stiles had not raised a colorable claim for relief. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court concluded it was not required to conduct an evidentiary hearing to resolve questions of fact and issues of credibility. Instead, the court made the preliminary determination that Stiles's position was objectively unreasonable. Specifically, the court reasoned that, given the nature of the charges, even assuming Stiles had not been provided the nurse's notes before he plead guilty, the records could not reasonably be regarded as material to his decision to plead guilty to one of the charges. The nurse's comment that the victim had not been injured and her observation that it was questionable whether the victim had been sexually assaulted were consistent with the charges, which were attempts to engage in sexual conduct with the victim rather than completed sexual acts or sexual assaults.

¶4 In his petition for review, however, Stiles insists that, at the very least, he raised colorable claims entitling him to an evidentiary hearing. He contends, as he did in the petition, that he would not have pled guilty had counsel given him the nurse's notes. Similarly, he contends a question of fact was created by the affidavit of Brand Cotton regarding the victim's recantation of initial statements that Stiles had attempted to sexually assault her.

¶5 The record and the applicable law support the trial court's ruling. In particular, the court correctly concluded the nurse's notes did not, as a matter of law, constitute newly discovered evidence as contemplated by Rule 32.1(e). Nor could those records support a claim of ineffective assistance of counsel that would entitle Stiles to relief. On review Stiles faults the court for not "address[ing] the issue of whether or not counsel in fact provided the defendant with [the nurse's notes] or if counsel did not whether or not he was ineffective for failing to do so." But the determination of whether a defendant has raised a colorable claim warranting an evidentiary hearing or whether summary disposition was proper under Rule 32.6(c) "is, to some extent, a discretionary decision for the trial court." *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). Here, the court correctly assumed as true Stiles's allegations that counsel had not provided Stiles with the nurse's notes and that Stiles would testify he would not have entered a guilty plea had counsel given him the nurse's notes. *See State v. Watton*, 164 Ariz. 323, 328, 793 P.2d 80, 85 (1990) (defendant entitled to evidentiary hearing only if he raises colorable claim for relief, which is one that, if taken as true, likely would have

changed outcome); *State v. Lemieux*, 137 Ariz. 143, 147, 669 P.2d 121, 125 (App. 1983) (same). This was the correct approach to determine whether Stiles had raised a colorable claim and Stiles has not persuaded us otherwise on review.

¶6 Similarly, the court did not abuse its discretion in rejecting the claim that the victim had recanted the allegations of sexual abuse or assault, which was supported, in part, by a third-party affidavit stating that the victim had recanted and that Stiles is entitled to relief based on this newly discovered evidence. With respect to that claim, the court correctly interpreted and properly applied *State v. Krum*, 183 Ariz. 288, 293, 930 P.2d 596, 601 (1995).

¶7 No purpose would be served in restating the trial court's ruling in its entirety here. Rather, because Stiles has not established on review that the court abused its discretion in dismissing the petition for post-conviction relief, we adopt the trial court's ruling. *Whipple*, 177 Ariz. at 274, 866 P.2d at 1360. Thus, although we grant the petition for review, we deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge