

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

AUG 29 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0112-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
WILLIE DEWAYNE STEVENS,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009139931001DT

Honorable Joseph C. Welty, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Linda Van Brakel

Phoenix
Attorneys for Respondent

Willie Dewayne Stevens

San Luis
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 In this petition for review, petitioner Willie Stevens challenges the trial court's ruling, entered after an evidentiary hearing, denying his petition for post-conviction relief in which he raised a claim of ineffective assistance of counsel and

asserted that the slightly aggravated, seventeen-year prison term for his second-degree-murder conviction was excessive. We will not disturb the court's ruling absent a clear abuse of discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶2 After consuming alcoholic beverages, Stevens wanted to see how fast his car could go and drove it at a speed of about 125 miles per hour in a twenty-five-mile-per-hour construction zone, lost control, collided into barricades, went off the road and over an embankment, landing upside down in an irrigation canal; two of his passengers were injured and a third was killed. Stevens was charged with one count each of second-degree murder, aggravated assault, and endangerment and was convicted pursuant to a plea agreement of second-degree murder. The trial court sentenced Stevens to an enhanced, slightly aggravated prison term of seventeen years. Stevens filed a notice of post-conviction relief, *see* Ariz. R. Crim. P. 32, and after appointed counsel filed a notice stating she had found no colorable issues to raise, *see* Ariz. R. Crim. P. 32.4(c)(2), Stevens filed a pro se petition, claiming trial counsel had been ineffective and his prison term was excessive.

¶3 Stevens seems to have been arguing in his pro se petition that counsel was ineffective in failing to challenge the search warrant that permitted a sample of his blood to be obtained and in convincing Stevens to reject a plea that would have been more favorable to him. He also seems to have suggested the prison term was improperly aggravated because the trial court considered in aggravation a factor that was an element of the offense. And, he maintained trial counsel had not properly advised him about the sentencing guidelines. The court set an evidentiary hearing solely “to resolve the factual

question as to what advice the Defendant was given by defense counsel prior to his decision to reject the September 14, 2009, plea offer,” adding that no other issues raised required “hearing or argument.” After the evidentiary hearing at which two attorneys from the law firm that had represented Stevens testified they had never advised him to reject the plea offer and Stevens testified to the contrary, the court took the matter under advisement. It subsequently denied relief on all claims.

¶4 In rejecting the first claim, the trial court stated Stevens had failed to raise colorable claims for relief because he had “provided no information to support his argument that the blood alcohol results in this case would have been suppressed had his lawyer filed an appropriate motion in the matter.” The court also rejected the claim that the sentence was unlawful, but Stevens does not appear to be raising that claim on review. Stevens summarily challenges on review the court’s rejection of his claims of ineffective assistance of counsel.

¶5 Stevens has not established on review that the trial court abused its discretion. First, by entering the plea, Stevens waived all non-jurisdictional defects, including claims of ineffective assistance of counsel, except those that relate to the validity of the plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993); *see also State v. Villegas-Rojas*, 231 Ariz. 445, ¶ 6, 296 P.3d 981, 982 (App. 2012). Thus, the court could have rejected summarily as waived the claim that trial counsel had been ineffective because he failed to conduct pretrial investigation regarding grounds to suppress blood-test results relating to alcohol concentration and failed to file a motion to suppress.

¶6 Second, even assuming *arguendo* this claim had not been waived by Stevens’s entry of the guilty plea, on the record before us, which includes the transcripts from the change-of-plea and sentencing hearings, Stevens has not persuaded us the trial court abused its discretion in rejecting his claim that counsel was ineffective for failing to file a motion to suppress. The court correctly found Stevens did not raise a colorable claim for relief. The minute entry reflects the court cited the correct standard for evaluating claims of ineffective assistance of counsel and applied it correctly. *See, e.g., Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to be entitled to relief defendant must show counsel’s performance was deficient and prejudicial).

¶7 Nor has Stevens established on review that the trial court abused its discretion in rejecting his claim that counsel had been ineffective because counsel advised him to reject the initial, more favorable, plea offer. “[A] defendant may state a claim for post-conviction relief on the basis that counsel’s ineffective assistance led the defendant to make an uninformed decision to reject a plea bargain” and, in this case, accept a subsequent plea offer, if counsel failed to provide the defendant with “information necessary to allow the [defendant] to make an informed decision whether to accept the plea.” *State v. Donald*, 198 Ariz. 406, ¶¶ 14, 16, 10 P.3d 1193, 1200 (App. 2000). “To establish prejudice in the rejection of a plea offer, a defendant must show ‘a reasonable probability that, absent his attorney’s deficient advice, he would have accepted the . . . plea offer’ and declined to go forward . . .” *Id.* ¶ 20, *quoting People v. Curry*, 687 N.E.2d 877, 888 (Ill. 1997) (first omission in *Donald*).

¶8 First, some of the arguments Stevens raises on review in connection with his contention that counsel was ineffective in this regard do not appear to have been made to the trial court and are being raised for the first time. We will not address those arguments. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). Second, with respect to those arguments and supportive authority or evidence that were presented to the trial court, he has established no basis for disturbing the court's ruling.

¶9 In reviewing a trial court's ruling following an evidentiary hearing, we defer to its factual findings, which we view in the light most favorable to sustaining the court's ruling, *see State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993), ever mindful that the trial court "is in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance" the evidence that was presented at the hearing, *State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). *See also State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of credibility of witnesses in Rule 32 evidentiary hearing). This court does not reweigh the evidence. *See State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003). "We examine a trial court's findings of fact after an evidentiary hearing to determine if they are clearly erroneous." *State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994).

¶10 Based on the record before us, Stevens has not persuaded us the trial court abused its discretion in rejecting his claim that counsel had rendered ineffective assistance in connection with plea negotiations. The court found Stevens's "factual claims that he was advised not to take the 12 year plea offer in the matter, that the

settlement conference was merely a formality and that his attorney was confident they would win the case, are not supported by the record.” The court added, “[i]n fact, . . . the credible evidence presented at the hearing demonstrates that [Stevens] was advised by his lawyer at the time of the settlement conference that the 12 year plea was a good plea and that he should take it.” Thus, the court concluded, because it did not find Stevens credible, he “failed to prove by a preponderance of the evidence that his attorney’s advice fell below prevailing standards or that he was prejudiced by his counsel’s advice in any way.”

¶11 We defer to the trial court here because in ruling on this claim of ineffective assistance, the court necessarily was required to resolve conflicts in the evidence. It clearly rejected Stevens’s testimony, which was at the heart of his claim, and accepted as more credible the testimony of his attorneys, which belied that claim. Again, the trial court, not this court, is the sole arbiter of witness credibility in post-conviction proceedings. *Fritz*, 157 Ariz. at 141, 755 P.2d at 446. We have no basis for interfering with the court’s ruling.

¶12 Stevens has not persuaded us on review that the trial court abused its discretion in denying the petition for post-conviction relief. Although we grant the petition for review, we deny Stevens’s request for relief.

/s/ Garye L. Vásquez

GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller

MICHAEL MILLER, Judge