FILED BY CLERK
OCT -2 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. PIERRE MONTE TAYLOR, Petitioner.	2 CA-CR 2013-0302-PR DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007143335004SE

Honorable Paul J. McMurdie, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Lisa Marie Martin — Phoenix
Attorneys for Respondent

Pierre M. Taylor — San Luis
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Pierre Taylor seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear

abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Taylor has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Taylor was convicted of second-degree murder and seven counts of armed robbery. The trial court imposed an enhanced, aggravated, twenty-year prison term on the murder conviction and enhanced, mitigated, concurrent 8.5-year prison terms on the armed robbery counts, to be served consecutive to the term on the murder count. Taylor thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had "reviewed the . . . record" and was "unable to find a tenable issue to submit to th[e] Court pursuant to" Rule 32. In a supplemental, pro se petition, however, Taylor claimed he had received ineffective assistance of trial counsel and as a result his plea had been involuntary. He also maintained his plea was "coerced" because members of his family were allowed to speak at a settlement conference and because the court had given him inaccurate information about the possibility of parole or clemency if he were to lose at trial. The court summarily denied relief.

¶3 On review, Taylor contends the trial court abused its discretion in determining he had not stated a colorable claim of ineffective assistance of counsel. "To state a colorable claim of ineffective assistance of counsel," Taylor was required to "show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced [him]." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006), *citing Strickland v. Washington*, 466 U.S. 668, 687 (1984). When a defendant has pleaded guilty, a claim of ineffective assistance of counsel is limited "to attacks on

the voluntary and intelligent nature of the guilty plea, through proof that the advice received from counsel was not 'within the range of competence demanded of attorneys in criminal cases.'" *Blackledge v. Perry*, 417 U.S. 21, 30 (1974), *quoting McMann v. Richardson*, 397 U.S. 759, 771 (1970); *see also State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). The allegations in Taylor's petition were insufficient to show that counsel's advice to accept the plea agreement here, which allowed Taylor to avoid facing a life sentence, was outside the range of competence. Indeed, many of Taylor's complaints about counsel's performance relate to matters of strategy. *See State v. Beaty*, 158 Ariz. 232, 250, 762 P.2d 519, 537 (1988) ("Matters of trial strategy and tactics are committed to defense counsel's judgment" and cannot serve as the basis for a claim of ineffective assistance of counsel.).

¶4 Taylor also reasserts his claim that his plea was the result of "galley coer[c]ion" by his family. But he has cited no evidence or legal authority to suggest that counsel performed deficiently in allowing his family to express their wishes to him or that "coercion" by such third parties makes a plea invalid. *See* Ariz. R. Crim. P. 32.9(c)(1)(iv). To the extent he maintains the trial court was not authorized to allow the family members to speak at the settlement conference, we disagree. Nothing in Rule 17.4(a), Ariz. R. Crim. P., limits those who may be present and permitted to speak during plea-negotiation settlement conferences.

¶5 We likewise reject Taylor's claim that his plea was made involuntary as a result of "misinformation" given to him by the trial court about the possibility of release from the life sentence he would face in the absence of a plea agreement. The court told

Taylor that the previous governor had not granted anyone clemency. But Taylor included with his petition for post-conviction relief a newspaper article indicating the two previous governors had granted clemency to a small number of those the clemency board recommended. Taylor also maintains that, contrary to the court's information, he is eligible for "general parole." Such parole is only available, however, to defendants who committed their offenses before January 1, 1994, A.R.S. § 41-1604.09(I), so the court correctly informed Taylor that he could only seek release from a life sentence through the clemency board. And, although Taylor presented evidence that the court was incorrect in its statement of the history of governors' grants of clemency, we cannot say that the court failed to comply with the requirements of Rules 17.4 and 17.2 in advising Taylor as to the consequences of his plea or that, as Taylor alleges, it incorrectly "painted such a grim view of any parole release" so as to improperly coerce a guilty plea. As the court correctly described, "general parole" was not available to Taylor, *see* § 41-1604.09(I), and, even accepting as true the newspaper article Taylor provided,[1] grants of clemency are rare and difficult to obtain. *See* A.R.S. § 31-402(C)(2) (in order to recommend commutation, board must find sentence "clearly excessive" and "a substantial probability that when released" defendant will follow the law). That being so, Taylor has also failed to establish that counsel's performance was deficient insofar as she failed to object to the court's characterization of Taylor's chances of release.

[1]In determining if a claim is colorable, the trial court is "obligated to treat [petitioner's] factual allegations as true." *State v. Jackson*, 209 Ariz. 13, ¶¶ 2, 6, 97 P.3d 113, 114-16 (App. 2004).

¶6 For these reasons, although we grant the petition for review, relief is denied.

/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