

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SHARON ANN MCCOWN,
Petitioner.

No. 2 CA-CR 2013-0351-PR
Filed December 2, 2013

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c); Ariz. R. Crim. P. 31.24

Petition for Review from the Superior Court in Navajo County

No. CR20040349

The Honorable John N. Lamb, Judge

The Honorable Carolyn C. Holliday, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Brad Carlyon, Navajo County Attorney

By Galen H. Wilkes, Deputy County Attorney, Holbrook

Counsel for Respondent

Sharon Ann McCown, Goodyear

In Propria Persona

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MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Kelly and Judge Espinosa concurred.

ECKERSTROM, Judge:

¶1 Petitioner Sharon Ann McCown was convicted after a jury trial of possession of dangerous drugs for sale, possession of marijuana for sale, and possession of drug paraphernalia. This court affirmed her convictions and sentences on appeal after counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and McCown filed a supplemental, pro se brief. *State v. McCown*, No 1 CA-CR 08-0258 (memorandum decision filed May 12, 2009). McCown subsequently sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., based on claims of ineffective assistance of trial counsel. The trial court denied relief and denied McCown's motion for rehearing and request for evidentiary hearing. This petition for review followed.

¶2 We will not disturb the trial court's ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). The trial court denied relief in a thorough, well-reasoned minute entry order in which it identified the claims McCown had raised and resolved them correctly and in a manner that has permitted this court to review its decision and the bases for the court's ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). McCown has not sustained her burden of establishing the court abused its discretion by denying her petition without an evidentiary hearing.

¶3 The record supports the court's conclusion that McCown failed to raise a colorable claim for relief and summary dismissal of her petition pursuant to Rule 32.6(c) was appropriate. That rule permits a trial court to dismiss a petition summarily, that

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is, without an evidentiary hearing, when no “material issue of fact or law” exists. Ariz. R. Crim. P. 32.6(c); Ariz. R. Crim. P. 32.8(a) (purpose of evidentiary hearing to “determine issues of material fact”); *State v. Jackson*, 209 Ariz. 13, ¶ 2, 97 P.3d 113, 114 (App. 2004) (colorable claim warranting evidentiary hearing is “one that, if the allegations are true, might have changed the outcome”), quoting *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993). We therefore adopt the court’s ruling.¹ *Whipple*, 177 Ariz. at 274, 866 P.2d at 1360.

¶4 We grant McCown’s petition for review but deny relief.

¹Some of the issues McCown raised on appeal and which were rejected by this court formed the underlying bases, at least in part, for some of the claims of ineffective assistance of trial counsel raised in her petition for review. *McCown*, 1 CA-CR 08-0258, ¶¶ 9-24. This court’s previous rejection of these claims necessarily negated any finding that counsel’s performance, even if deficient, was prejudicial. See *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to raise colorable claim, defendant must show counsel’s performance both deficient and prejudicial); accord *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006).