IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

STEPHEN JOSEPH MOCCO,
Petitioner.

No. 2 CA-CR 2014-0255-PR
Filed November 17, 2014

Petition for Review from the Superior Court in Cochise County
No. CR200300529
The Honorable James L. Conlogue, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Joy Bertrand, Scottsdale
Counsel for Petitioner

MEMORANDUM DECISION

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

E C K E R S T R O M, Chief Judge:

¶1 Petitioner Stephen Mocco 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). Mocco has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Mocco was convicted of attempted robbery, robbery, two counts of burglary, three counts of aggravated assault, one count of attempted sexual abuse, one count of attempted sexual assault, three counts of kidnapping, and four counts of sexual assault. The trial court imposed various presumptive, partially aggravated, and aggravated sentences, many to be served consecutively, totaling more than 100 years' imprisonment. This court affirmed his convictions and sentences on appeal. *State v. Mocco*, No. 2 CA-CR 2004-0295 (memorandum decision filed Apr. 28, 2006).

¶3 Mocco initiated a proceeding for post-conviction relief in 2012. He argued in his petition that information discovered during the Rule 32 proceeding, which indicated one of his victims had a delusional belief that she had a boyfriend who visited her, should have been disclosed pursuant to *Brady*,[1] and that such information was newly discovered evidence entitling him to relief. The trial court summarily denied relief.

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[1]*Brady v. Maryland*, 373 U.S. 83 (1963).

¶4 On review, Mocco essentially repeats his arguments made below and claims the trial court abused its discretion in determining that *Brady* did not apply and that the mental-health evidence was not newly discovered evidence entitling him to relief. But the court correctly and clearly resolved the issues Mocco raised; we need not, therefore, repeat its ruling in its entirety. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision"). Rather, we adopt the court's ruling in large part, adding to its decision only to emphasize those portions of the decision that correctly resolve the issues.

¶5 As to Mocco's *Brady* claim, the trial court correctly concluded the prosecutor was not required to disclose the records of the mental-health agency that was treating the victim.[2] That agency was not, in this context, a government agency "acting on the government's behalf in the case," and thus disclosure of its records, which were unknown to the prosecutor, was not required. *Kyles v. Whitley*, 514 U.S. 419, 437 (1995) (concluding records of agencies acting on government's behalf, "including the police," must be disclosed by prosecutor).

¶6 Furthermore, to establish a claim of newly discovered material facts pursuant to Rule 32.1(e), a defendant must show due diligence in obtaining the facts, and such facts must not be "used solely for impeachment," unless the evidence "substantially undermines testimony which was of critical significance at trial such that the evidence probably would have changed the verdict." In this case, as the trial court pointed out, the "parties were aware before

[2]Because we conclude the evidence here was not subject to *Brady*, we need not address whether a *Brady* claim raised independent of a claim of newly discovered evidence is subject to preclusion if not raised on appeal. *See* Ariz. R. Crim. P. 32.1(a), 32.2(a)(3).

trial that [the victim had made delusional] claim[s] to have a boyfriend in the past." Although the victim's sister stated the victim had not had such delusions when properly medicated and for a few years, we cannot say Mocco acted with diligence in failing to subpoena her records before trial, instead of in preparation for his Rule 32 proceeding.

¶7 Likewise, we agree with the trial court that this evidence, which would only serve to impeach the victim's testimony, was unlikely to change the verdict. As the court pointed out, the victim's testimony "was disjointed and contradictory" and she was unable to identify Mocco or even state her own age. As the court suggested, an argument that the "boyfriend" was real and had committed the offenses would have been inconsistent with Mocco's defense. And further evidence of the victim's mental disability would have added little, and we cannot say it probably would have changed the verdict.

¶8 For these reasons, although we grant the petition for review, we deny relief.