

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

AARON JOSEPH BISHOP,
Petitioner.

No. 2 CA-CR 2014-0334-PR
Filed January 6, 2015

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pinal County

No. S1100CR201202001

The Honorable Henry G. Gooday Jr., Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Renee J. Waters, Deputy County Attorney, Florence
Counsel for Respondent

Aaron Joseph Bishop, Florence
In Propria Persona

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MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Kelly and Judge Vásquez concurred.

H O W A R D, Judge:

¶1 Petitioner Aaron Bishop 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). Bishop has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Bishop was convicted of possession of methamphetamine and possession of drug paraphernalia. The trial court imposed a presumptive, 2.5-year prison term on the methamphetamine count and suspended the imposition of sentence and placed Bishop on an eighteen-month term of probation for the paraphernalia count.

¶3 Bishop thereafter initiated a proceeding for post-conviction relief, arguing in his petition that he had received ineffective assistance of counsel because he was passed from one attorney to the other and ultimately lost the opportunity for a more favorable plea through the Early Disposition Court system. He claimed that he wanted to accept the original plea offer, but because he did not develop a good relationship with any of his attorneys, he did not get his questions answered and should therefore have the original plea reinstated. The trial court summarily denied relief.

¶4 Bishop was arrested on September 15, 2012, and the complaint against him was filed on September 18. Bishop’s initial appearance was held on September 25, and he was represented by counsel, who was present at the hearing. At the hearing, Bishop

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requested that the matter be set for a preliminary hearing, and the state set forth on the record the plea it originally had offered – a 2.5-year sentence and a fine. The court explained possible sentences Bishop could face in the absence of a plea and confirmed that Bishop wanted to reject the plea. The court emphasized that upon rejecting the plea Bishop “may never get it back,” and Bishop affirmed that he wanted to reject the plea, without further comment.

¶5 On review Bishop modifies his claim of ineffective assistance of counsel, arguing that “no counsel was actually assigned to represent him” on September 25 and that, because the plea was explained by the court and prosecutor, and not his attorney, he was entirely denied the right to counsel. But, as detailed above, Bishop was represented by counsel at the hearing on September 25. And when asked by the court if he understood that a plea was being offered, that he would lose the plea if he rejected it, and whether he wished to decline it, Bishop answered yes and did not indicate he had any concerns or questions or suggest he had not been adequately counseled about the plea.

¶6 To state a colorable claim, Bishop must do more than simply contradict what the record plainly shows. *See State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998) (defendant’s claim he was unaware sentence “must be served without possibility of early release” not colorable when “directly contradicted by the record”). He has not done so, and we cannot say the trial court abused its discretion in summarily denying relief.

¶7 Therefore, although we grant the petition for review, we deny relief.