IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CARLOS MARTINEZ NAVARRO,
Petitioner.

No. 2 CA-CR 2015-0142-PR
Filed June 9, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2012124609001DT
The Honorable Richard Albrecht, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Robert E. Prather, Deputy County Attorney, Phoenix
Counsel for Respondent

T. Anthony Guajardo & Associates, Phoenix
By T. Anthony Guajardo
Counsel for Petitioner

MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Judge Vásquez and Judge Brammer[1] concurred.

H O W A R D, Judge:

¶1 Petitioner Carlos Navarro seeks review of the trial court's order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Navarro pled guilty to endangerment, a class 6 felony, and driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs, a misdemeanor.[2] In November 2012, the trial court suspended the imposition of sentence and placed Navarro on concurrent, one-year terms of probation that included a four-month jail term. Navarro, a Mexican

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[1]The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]Navarro was charged with driving or being in actual physical control of a vehicle while under the influence of intoxicating liquor or drugs while his license was suspended, cancelled, revoked or refused, and driving with an alcohol concentration of .08 or more while his license was suspended, cancelled, revoked or refused, both class 4 felonies.

citizen who had resided in the United States for twenty years at the time of the offenses, was transferred after sentencing to federal custody and was deemed "subject to removal from the United States."

¶3 In May 2013, Navarro filed a motion to withdraw his guilty plea, followed by an untimely notice and petition for post-conviction relief, claiming his untimely filing was through no fault of his own based on Rule 32.1(f).[3] Relying on *Padilla v. Kentucky*, 559 U.S. 356 (2010), Navarro argued below that trial counsel had been ineffective by "misadvis[ing him] of the immigration consequences of his guilty plea." He asserted counsel should have informed him that endangerment, *see* A.R.S. § 13-1201, one of the offenses to which he pled guilty, "is categorically a crime involving moral turpitude," thereby exposing him to deportation. He further maintained that, because there was no reason to aggravate the driving under the influence (DUI) offenses with which he originally had been charged, he would have been convicted, at worst, of "misdemeanor DUI," and that he "would have been better off accepting the Aggravated DUI as originally charged" because it lacked the intent requirement found in endangerment and thus is not a crime involving moral turpitude.

[3]The trial court denied Navarro's motion to withdraw shortly after he filed his Rule 32 petition, finding he had been "specifically advised by the Court that a plea of guilty could result in removal or deportation." The court nonetheless permitted him to proceed with his untimely post-conviction proceeding, which apparently incorporated his motion to withdraw. To the extent Navarro blends these claims on review, we nonetheless find no abuse of discretion in the court's dismissal of his petition below. Like a ruling on a petition for post-conviction relief, we review the trial court's denial of a motion to withdraw a plea for an abuse of discretion. *See State v. Anderson*, 147 Ariz. 346, 351, 710 P.2d 456, 461 (1985); *see also* Ariz. R. Crim. P. 17.5 (plea may be withdrawn "when necessary to correct a manifest injustice.").

¶4 Additionally, counsel asserted in the petition below that if Navarro had "known that this conviction would make him mandatorily deportable, he would have exercised his right to trial." However, in the affidavit attached as an exhibit to the petition, Navarro did not state he would not have pled guilty absent counsel's deficient performance. Rather, he stated in relevant part that counsel had not informed him that deportation was "'automatic,'" and that he was given no choice but to sign the plea agreement. Navarro also attached to his petition an unattested letter from trial counsel stating Navarro "was aware" he was not an immigration attorney, he had advised Navarro he could seek advice from an immigration attorney "regarding the immigration consequences in this case," and he also had advised Navarro "there were potential immigration consequences" from the offenses to which he was pleading guilty. Counsel further stated he did "not recall specifically advising Mr. Navarro that his deportation was an absolute certainty."

¶5 In its ruling dismissing Navarro's petition, the trial court noted that *Padilla* required an attorney to advise the client only that the convictions may carry a risk of adverse consequences if the law is not clear. It further noted it was not clear whether endangerment would result in automatic deportation. And it stated not only had it advised Navarro of the possible immigration consequences of pleading guilty before he entered his plea, but the plea agreement, which Navarro indicated he had reviewed with his attorney before he initialed and signed it, also had apprised him of the potential deportation consequences of pleading guilty.[4] The

[4]The plea agreement provided:

> 10. I understand that if I am not a citizen of the United States my decision to go to trial or enter into a plea agreement may have immigration consequences. Specifically, I understand that pleading guilty or no contest to a crime may affect my immigration status. Admitting guilt may result in deportation even if the charge

court then determined that the "uncertainty with respect to the immigration consequences" of pleading guilty to endangerment had led the court to conclude "that counsel fulfilled his duty under [*Padilla*] when he advised [Navarro] that the plea may result in adverse immigration consequences."

¶6 On review, Navarro repeats his claims of ineffective assistance of counsel based on *Padilla* and argues the trial court[5] erred "in not applying the law correctly" and by permitting him to accept a guilty plea that "put him in a worse position than if he took the original charge." He maintains he was prejudiced because trial counsel failed to ensure he consulted an immigration attorney before pleading guilty, and asserts counsel's letter constitutes an admission that he had "failed to competently advise his client [] as to the consequences for taking the plea and not going to trial or inquiring why the DUIs were aggregated [sic], when [Navarro] did not know his [d]river's license was suspended."

¶7 Navarro also asserts, without citation to relevant legal authority, that "[p]ursuant to Arizona state criminal law and its application, Endangerment is a qualifying charge for automatic deportation," and that trial counsel "failed to inform [Navarro] of this well[-]settled law that a[n] Endangerment charge is a deportable offense." To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient

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> is later dismissed. My plea or admission of guilt could result in my deportation or removal, could prevent me from ever being able to get legal status in the United States, or could prevent me from becoming a United States citizen.

[5]Navarro refers to the trial court as the "district court," and citing federal law, he improperly states that a de novo standard of review applies in this matter. *See Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948 (trial court's ruling on post-conviction relief reviewed for abuse of discretion).

performance prejudiced him. *See State v. Bennett,* 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington,* 466 U.S. 668, 687 (1984). Navarro does not appear to assert on review that the trial court abused its discretion in dismissing his petition below. *See State v. Poblete,* 227 Ariz. 537, ¶ 1, 260 P.3d 1102, 1103 (App. 2011) (defendant's burden on review to establish abuse of discretion); *see also* Ariz. R. Crim. P. 32.9(c) (aggrieved party may petition court "for review of the actions of the trial court"). Rather, as the state asserts in its response to the petition for review, Navarro seems to use his petition for review as a vehicle to reargue and expand upon the arguments he raised below. In any event, we find no error in the court's determination that counsel was not ineffective based on *Padilla.* We therefore adopt the court's thorough analysis. *See State v. Whipple,* 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules 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").

¶8 To the extent Navarro claims, without citation of authority, that "Endangerment is a qualifying charge for automatic deportation," and therefore attacks the basis for the trial court's ruling, he is in error. First, because he has not cited relevant authority, the claim is waived. *Cf. State v. Bolton,* 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on direct review). Second, the concurring opinion in *Padilla* contradicts this claim. *Padilla*, 559 U.S. at 379 (in concurring opinion, Justice Alito noted difficulty in determining whether crime involves moral turpitude, stating absent actual injury, endangerment offense may not be crime of moral turpitude).

¶9 Accordingly, we grant review but deny relief.