

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ISIDRO PACHECO,
Petitioner.

No. 2 CA-CR 2015-0240-PR
Filed October 13, 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NOT FOR PUBLICATION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. S1100CR201301351
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Isidro Pacheco, Florence
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Howard and Judge Brammer¹ concurred.

VÁSQUEZ, Presiding Judge:

¶1 Petitioner Isidro Pacheco seeks review of the trial court's denial of 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). We find no such abuse here.

¶2 Pursuant to a plea agreement, Pacheco was convicted of one count of child molestation and two counts of attempted sexual conduct with a minor under the age of fifteen, all dangerous crimes against children. The trial court sentenced Pacheco to a presumptive, seventeen-year prison term for the molestation conviction, to be followed by lifetime probation for the attempted sexual conduct convictions. Appointed counsel notified the court she was unable to identify any "colorable claims" to raise in a Rule 32 petition, and Pacheco filed a supplemental petition. In its ruling denying that petition, the court found, "[A]ll matters contained in the Petition . . . are precluded as having been previously ruled upon or untimely filed or the Petition lacks sufficient basis in law and fact to warrant further proceedings herein and no useful purpose would be served by further proceedings." This petition for review followed.

¶3 On review, Pacheco maintains the trial court was required to address each of his claims in detail and asserts he should

¹The 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 our supreme court.

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be resentenced or be permitted to withdraw his guilty plea. However, summary disposition of claims for post-conviction relief is appropriate when, as here, a defendant presents no “material issue of fact or law which would entitle the defendant to relief” and “no purpose would be served by any further proceedings.” Ariz. R. Crim. P. 32.6(c). Pacheco also contends the court’s “generic, blanket denial” of his petition shows that it adopted the state’s argument that a preponderance of the evidence standard applied despite the absence of an evidentiary hearing. *See* Ariz. R. Crim. P. 32.8(c). Although Pacheco states that “as far as anyone knows” the court adopted the state’s position, no evidence supports his claim. And, simply because the state presents an argument does not mean the court adopted the state’s reasoning.

¶4 In a related argument, Pacheco argues that, as a pleading defendant filing an of-right Rule 32 petition, he is entitled to fundamental error review. However, Pacheco is not entitled to fundamental error review by this court. *See State v. Smith*, 184 Ariz. 456, 459, 910 P.2d 1, 4 (1996) (appellate court not required to conduct fundamental error review in deciding whether to grant review of denial of pleading defendant’s petition for post-conviction relief).

¶5 Additionally, to the extent Pacheco challenges the trial court’s findings that his claims were “precluded as having been previously ruled upon or untimely filed,” we note that the court stated in the alternative that it was denying his petition because it “lacks sufficient basis in law and fact to warrant further proceedings . . . and no useful purpose would be served by further proceedings,” a finding the record supports. We thus find that the court reached the right result and also deny relief. *Cf. State v. Oakley*, 180 Ariz. 34, 36, 881 P.2d 366, 368 (App. 1994) (appellate court “will affirm the trial court when it reaches the correct result even though it does so for the wrong reasons”).

¶6 We further note that Pacheco devotes the majority of his petition to the presentation of “Facts Material to the Issues Presented.” Although not technically presented as “arguments” on review, Pacheco nonetheless seems to “argue,” as he did below, that he was forced to plead guilty because of counsel’s deficient

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performance, asserting his attorneys failed to conduct pretrial investigation or “mount a defense” for his case or to challenge the voluntariness of his confession to police, and that counsel failed to present mitigating evidence at sentencing. As such, we briefly address these claims. To present a colorable claim of ineffective assistance of counsel, a defendant must establish that counsel’s performance fell below an objectively reasonable professional standard and that the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006). “A strong presumption exists that . . . counsel provided effective assistance,” and a defendant has the burden of overcoming that presumption. *Id.* ¶ 22. In this case, Pacheco has failed to overcome that presumption.

¶7 Pacheco fails to explain what additional pretrial investigation counsel should have undertaken or how he was prejudiced by that deficient performance. Nor does he provide support for his belief that a motion to suppress his confession would have been successful or explain why counsel was deficient for failing to file such a motion. And, although he argues trial counsel was “‘more familiar’” with his case than the attorney who represented him at sentencing, he does not identify or describe the mitigating evidence she would have offered had the trial court continued the sentencing hearing rather than proceeding with substitute counsel, nor does he explain what the “dozens of letters [he would have had] sent from Mexico asking the court to give [him] a mitigated sentence” would have said. Additionally, although the plea agreement stated the sentence for child molestation would be between ten and seventeen years, and Pacheco told the court at the change-of-plea hearing that no one had promised him anything in exchange for pleading guilty, he nonetheless argues trial counsel “assured him that he had a good chance of receiving a ten year sentence.” To the extent Pacheco asserts “[t]he only reason [he] signed the plea was because [his attorney] told [him] that [he] had a ‘good chance’ of getting the 10 year sentence,” the transcript from the change-of-plea hearing simply does not support his argument. *See State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998) (claim not colorable when “directly contradicted by the record”).

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¶8

Accordingly, we grant review but deny relief.