

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TAMAR SHAWN FLOWERS,
Petitioner.

No. 2 CA-CR 2015-0242-PR
Filed July 31, 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NOT FOR PUBLICATION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. CR2011139369001DT
The Honorable Carolyn K. Passamonte, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Lisa Marie Martin, Deputy County Attorney, Phoenix
Counsel for Respondent

Tamar Flowers, Florence
In Propria Persona

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MEMORANDUM DECISION

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

H O W A R D, Judge:

¶1 Petitioner Tamar Flowers seeks review of the trial court's order summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court 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 In March 2012, Flowers pled guilty to aggravated assault. The plea agreement included a stipulation that he would be sentenced to a prison term of no more than seven years. The trial court subsequently sentenced Flowers to a partially mitigated, seven-year prison term. Flowers sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claims to raise in a Rule 32 proceeding.

¶3 In April 2013, Flowers filed a pro se petition for post-conviction relief claiming trial counsel had been ineffective for the following reasons: he had coerced Flowers to plead guilty despite previously having told him he had a fifty-percent chance of success at trial; he had told Flowers he could receive a fifty-year sentence at trial; and he had told Flowers that his father wanted him to plead guilty and that he would receive a five-year prison term if he did so. To state a claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below prevailing professional norms and that the outcome of the case would have been different but for the deficient performance. *Strickland v.*

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 the supreme court.

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Washington, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶4 The trial court summarily dismissed Flowers’s petition, concluding that trial counsel’s statement regarding the possible sentence he could receive at trial was supported by the record and that counsel’s conduct was “objectively reasonable,” thereby eliminating the need for a prejudice analysis. The court also made the following specific findings, which are fully supported by the record:

The record reflects that [Flowers] participated in a settlement conference during which the judge explained the possible range of sentence if convicted at trial. His attorney’s analysis was on target with what the judge explained. [Flowers] also appears to claim that he was told that the plea would guarantee him a five[-]year sentence. Nothing in the record suggests that [Flowers] could have reasonabl[y] believed that he would receive five years. After rejecting the plea at the settlement conference, he was given a plea which allowed for a cap of seven years on his prison sentence. [Flowers] initialed all of the paragraphs of the plea agreement, signed it and told the Court that he had read and understood the terms of the plea agreement. He further avowed to the Court that nobody had forced him to sign the plea agreement.

In addition, when the court denied Flowers’s motion to withdraw from the plea agreement at the sentencing hearing, it stated “[e]ven if the Court accepted that everything [Flowers] put in his motion is correct, he was not misinformed by [trial counsel] about the possibility of the sentence that he would receive if he was convicted at trial.”

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¶5 On review, Flowers repeats the same claims he raised below, but fails to assert any way in which the trial court abused its discretion in denying those claims. See Ariz. R. Crim. P. 32.9(c)(1)(iv) (petition for review shall state “reasons why the petition should be granted”). Moreover, for the reasons provided by the court in its ruling, set forth above, we find no abuse of discretion based on the record before us. In addition, to the extent Flowers contends for the first time on review that counsel failed to investigate his offense adequately, we do not address that claim. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii).

¶6 Therefore, we grant the petition for review, but deny relief.