

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

WILLIAM H. HALL III,
Petitioner.

No. 2 CA-CR 2015-0349-PR
Filed November 2, 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NOT FOR PUBLICATION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 Yavapai County
No. P1300CR200901151
The Honorable Celé Hancock, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Sheila Sullivan Polk, Yavapai County Attorney
By Jeffrey G. Paurpore, Deputy County Attorney, Prescott
Counsel for Respondent

William H. Hall III, Florence
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Judge Espinosa and Judge Brammer¹ concurred.

ECKERSTROM, Chief Judge:

¶1 Petitioner William Hall seeks review of the trial court's order denying his petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., in which he raised a variety of claims related to the court's revocation of his probation following a contested revocation hearing. We will not disturb the court's ruling absent a clear abuse of discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Finding no such abuse here, we grant the petition but deny relief.

¶2 Hall was convicted in October 2010, pursuant to a plea agreement, of attempted sexual exploitation of a minor under the age of fifteen and surreptitious photographing. The trial court suspended the imposition of sentence and placed Hall on supervised probation for ten years. In March 2011, the state filed a petition to revoke probation, alleging Hall had violated the conditions of probation as follows: (1) Uniform Conditions of Supervised Probation No. 1, which required him to maintain a crime-free lifestyle by not committing criminal offenses; (2) Uniform Condition No. 7, which required him to notify the Adult Probation Department (APD) if he changed his address and to live in a residence approved by APD; (3) Special Conditions of Probation for Sex Offenders No. 11, by failing to abide by the Sex Offender Computer Usage Guidelines, specifically Guideline No. 2, which limited him to one computer in his residence, absent approval by his supervising probation officer, and Guideline No. 13, which prohibited him from

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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using an electronic bulletin board system and a variety of internet-based chat and file sharing websites. After a contested hearing, the trial court found Hall had violated Uniform Condition No. 7 and Special Condition No. 11, by violating computer usage guideline Nos. 2 and 13. The court revoked probation and sentenced Hall to concurrent, presumptive prison terms of ten and 1.5 years.

¶3 Hall appealed and appointed counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969); Hall filed a supplemental brief in propria persona, raising numerous issues. The trial court's order revoking probation and the sentences imposed was affirmed on appeal. *State v. Hall*, No. 1 CA-CR 11-0477 (memorandum decision filed Mar. 22, 2012). Based on that memorandum decision, it appears that among the issues Hall raised was that computer guideline No. 13 was, essentially, vague and that it was not clear to him he was prohibited from using the social networking site, Facebook.

¶4 Hall filed a timely notice of post-conviction relief. In the petition filed by appointed counsel, Hall raised the following claims: (1) he did not knowingly and voluntarily waive his right to testify at the revocation hearing; (2) computer usage guideline No. 13 is vague; (3) trial counsel was ineffective in failing to inform him he had the right to testify, argue guideline No. 13 is vague, and present certain evidence in his defense; and, (4) appellate counsel was ineffective in failing to argue guideline No. 13 is vague.

¶5 The trial court denied relief without an evidentiary hearing in a thorough, seven-page ruling in which it identified the claims raised and clearly stated its reasons for denying relief. It found, inter alia, Hall's claims regarding computer usage had been adjudicated on appeal and therefore were precluded. See Ariz. R. Crim. P. 32.2(a)(2). The court rejected the remaining claims on the merits, finding with respect to the claim of ineffective assistance of counsel that Hall had "failed to show by a preponderance of the evidence that Defense Counsel's performance fell below reasonable standards."

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¶6 Although Hall conceded below in his reply to the state’s response to his Rule 32 petition that he was required to prove the grounds for relief by a preponderance of the evidence, he nonetheless contends on review the trial court abused its discretion by denying relief without an evidentiary hearing after applying “an inapplicable standard of review (preponderance of the evidence) to the petition standing alone.” Hall does not challenge on review the court finding precluded pursuant to Rule 32.2(a)(2) his claim that computer usage guideline No. 13 was unclear. Instead, he again argues the merits of that claim, asserting summarily at the end of that argument, as he did in his Rule 32 petition, that appellate counsel failed to raise the claim and therefore was ineffective. Hall also seems to challenge the sufficiency of the evidence to support the court’s finding that he violated conditions of probation and contends he at least was entitled to an evidentiary hearing, particularly on his claim that he did not testify at the revocation hearing because neither counsel nor the court had called him to testify nor was he aware he could testify.

¶7 Hall has not sustained his burden of establishing the trial court abused its discretion in resolving the claims he raised in the petition for post-conviction relief.² The record supports the ruling, and no purpose would be served by restating the ruling in its

²Although the trial court did not specifically identify and address Hall’s claim of ineffective assistance of appellate counsel, we presume the court considered and rejected it. *Cf. Flynn v. Cornoyer-Hedrick Architects & Planners, Inc.*, 160 Ariz. 187, 193, 772 P.2d 10, 16 (App. 1988) (rejecting claim court did not consider reply to response to motion, despite absence in minute entry of express statement by court it had read reply). Moreover, the claim was asserted in a cursory fashion and similarly was not developed on review. *See State v. Ekmanis*, 180 Ariz. 429, 432, 885 P.2d 117, 120 (App. 1994). And given that the trial court rejected on the merits the very arguments he faults appellate counsel for not raising, we need not address the issue further, nor can we say the trial court abused its discretion in denying post-conviction relief on this or any other ground.

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entirety here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We therefore grant the petition for review but deny relief.