IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MARK ANTHONY CURTIS,
Petitioner.

No. 2 CA-CR 2015-0373-PR
Filed November 19, 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NOT FOR PUBLICATION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
Nos. CR2010162274001DT; CR2010167374002DT;
CR2011131784002DT
The Honorable Pamela D. Svoboda, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Bruce F. Peterson, Maricopa County Legal Advocate
By Colin F. Stearns, Deputy Legal Advocate, Phoenix
Counsel for Petitioner

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Mark Curtis seeks review of the trial court's order denying his petitions for post-conviction relief filed in separate cause numbers pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Curtis has not met his burden of demonstrating such abuse here.

¶2 Curtis pled guilty in three different cases to two counts of weapons misconduct and one count of second-degree burglary. At a settlement conference before pleading guilty, Curtis and the trial court discussed whether he would be entitled to appeal the denial of motions to suppress he had filed while representing himself. The court told Curtis that he would waive the right to appeal should he plead guilty, and that:

> [T]he court of appeals gives some deference to trial Court judges and if we abuse our discretion or that is one of the standards by which we can have something overturned on appeal, they give some deference to us because they don't make decisions for no reason, based it on the law, based on argument, factual, maybe believed an offer for some other witness who knows, but there is some deference given so unless [the trial court] abused his discretion denying your motion, it will most likely be . . . upheld on appeal.

. . . .

> But it is never a good idea to hang your []hat on what an appeals court will do because that is pretty risky and they don't hear it right away, they give some [d]eference to trial court judges unless we abuse our discretion, they usually will uphold what is done because we do it based on case law or interpretation of credibility and so forth.

¶3 The trial court sentenced Curtis to a ten-year prison term for burglary. For the remaining counts, the court suspended the imposition of sentence and placed him on concurrent, three-year terms of probation. Curtis then sought post-conviction relief in each cause, arguing that his guilty pleas were not knowing, voluntary, and intelligent because the court misled him about the standard of review the court of appeals would have applied had he sought to appeal the denial of his motions to suppress. He included an affidavit in which he claimed that standard was material to his decision to plead guilty and, had he been aware "that the legal reasoning used by the trial court to deny [his] motion to suppress would be reviewed de novo," he would not have pled guilty. He further asserted his trial counsel had been ineffective in failing to correct the misleading information. The trial court summarily dismissed Curtis's petitions. It determined the court's comments were not misleading because the court "repeatedly used the word 'some' deference" and was clear that abuse of discretion is only one standard that might be applicable. This petition for review followed.

¶4 On review, Curtis argues that he has presented a colorable claim that he was misled by the court "regarding the standard of appellate review for a motion to suppress," thereby entitling him to an evidentiary hearing. A defendant is entitled to an evidentiary hearing only if his or her claim is colorable, that is, when the "allegations, if true, would have changed the verdict" or sentence. *State v. Krum*, 183 Ariz. 288, 292, 903 P.2d 596, 600 (1995).

A defendant's decision to plead guilty must be voluntary, knowing, and intelligent. *See Boykin v. Alabama*, 395 U.S. 238, 242 (1969); *State v. Brown*, 212 Ariz. 225, ¶ 15, 129 P.3d 947, 951 (2006); *see also* Ariz. R. Crim. P. 17.1(b). And a plea is involuntary "only where a defendant lacks information of 'true importance in the decision-making process.'" *State v. Pac*, 165 Ariz. 294, 295-96, 798 P.2d 1303, 1304-05 (1990), *quoting State v. Crowder*, 155 Ariz. 477, 481, 747 P.2d 1176, 1180 (1987).

¶5 We agree with the trial court that its settlement comments were not misleading. Curtis is correct that the legal conclusions involved in a trial court's ruling on a motion to suppress are not entitled to deference. *See State v. Evans*, 237 Ariz. 231, ¶ 6, 349 P.3d 205, 207 (2015). But that is not inconsistent with the court's statements here—which emphasized that the ruling would only be given "some" deference. Factual and discretionary decisions involved in a court's ruling on a motion to suppress evidence are indeed accorded deference in appellate review. *See id.*; *State v. Ahumada*, 225 Ariz. 544, ¶ 5, 241 P.3d 908, 910 (App. 2010). Curtis claims the court was incorrect in stating "that the Court of Appeals would give deference to the trial court's ruling because the court's rulings are based on case[]law" because "legal conclusions" are instead reviewed de novo. But that a ruling is based on caselaw does not necessarily make it a legal decision subject to de novo review; a trial court might evaluate precedent to aid it in making a discretionary determination. That discretionary determination would be given deference on appeal.

¶6 Moreover, to obtain an evidentiary hearing, Curtis must do more than merely contradict the record. *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"). After pleading guilty but before sentencing, Curtis sought to withdraw from the plea. He asserted, inter alia, that "the only reason" he had pled guilty was his understanding that he would be entitled to seek review of the denial of his motions to suppress. But that understanding flew in the face of the express advice from the trial court, before Curtis changed his plea, that he was waiving any

rights to challenge the suppression ruling. It also necessarily renders immaterial to his decision to plead guilty any misconceptions he may have had about the applicable standard of review on appeal.

¶7 For the reasons stated, we grant review but deny relief.