

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

KENNETH EUGENE HINKLE,
Petitioner.

No. 2 CA-CR 2015-0462-PR
Filed February 18, 2016

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NOT FOR PUBLICATION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. CR2008159514001DT, CR2011006177001DT
The Honorable Susan M. Brnovich, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Karen Kemper, Deputy County Attorney, Phoenix
Counsel for Respondent

Kenneth E. Hinkle, Florence
In Propria Persona

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MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Petitioner Kenneth Hinkle seeks review of the trial court's order dismissing 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). Hinkle has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Hinkle was convicted in CR2008159514 of second-degree murder and participating in a criminal street gang. While imprisoned,¹ he pled guilty to promoting prison contraband in CR2011006177. The trial court imposed a presumptive, 9.25-year prison term in the 2011 cause to be served concurrently with his sentences in the 2008 cause, the longer of which was twenty years' imprisonment.

¶3 Hinkle thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the case and was "unable to find any claims for relief to be raised in post-conviction relief proceedings." In a supplemental, pro se petition, however, Hinkle asserted claims of prosecutorial misconduct, perjury, disclosure violations, and

¹Hinkle had been convicted and sentenced in various other causes as well, and it is unclear on the record before us whether he had commenced the sentence resulting from his conviction of second-degree murder or was still serving other sentences at the time of the offense.

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ineffective assistance of counsel. The trial court summarily denied relief, concluding Hinkle's claims were precluded or had not been adequately developed.

¶4 On review, Hinkle effectively abandons his claims of prosecutorial misconduct and pretrial error and argues he received ineffective assistance of counsel, claiming counsel was ineffective in failing to file a motion to dismiss the weapons-misconduct count originally filed against him, in pressing him to enter a plea because he faced the death penalty, in failing to challenge a witness identification, and in failing "to call an eye witness for defense" or to file a motion to suppress.

¶5 "To state a colorable claim of ineffective assistance of counsel," Hinkle was required to "show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced [him]." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). By pleading guilty, Hinkle waived all non-jurisdictional defects, including claims of ineffective assistance of counsel, except insofar as they relate to his decision to plead guilty. See *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). In that regard, Hinkle must allege he "would not have pleaded guilty but for counsel's deficient performance" and must provide "an allegation of specific facts which would allow a court to meaningfully assess why that deficiency was material to [his] decision" to waive his rights. *State v. Bowers*, 192 Ariz. 419, ¶ 25, 966 P.2d 1023, 1029 (App. 1998).

¶6 We cannot say the trial court abused its discretion in concluding that Hinkle failed to meet that standard. As the court noted, Hinkle's petition did not include specific factual allegations, and it was only in his reply to the state's response to his petition that he in any way developed an argument that his counsel had been ineffective. Cf. *State v. Lopez*, 223 Ariz. 238, ¶ 7, 221 P.3d 1052, 1054 (App. 2009) (trial court need not consider claims of ineffective assistance of counsel first raised in petitioner's reply). Likewise, Hinkle was charged with, inter alia, first-degree, premeditated murder, and the state indicated it intended to seek the death penalty

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based on multiple aggravating factors. Hinkle has not explained how any of counsel's alleged errors would have led him to reject a plea agreement that avoided the death penalty and that the court described at sentencing as "extremely generous" and "a great deal" in view of the multiple charges against Hinkle in the causes at issue here and several others.

¶7 Therefore, although we grant the petition for review, we deny relief.