

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DARIN D. ROMAINE,
Petitioner.

No. 2 CA-CR 2016-0153-PR
Filed June 6, 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NOT FOR PUBLICATION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
No. CR2010166752001SE
The Honorable Roger E. Brodman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Susan L. Luder, Deputy County Attorney, Phoenix
Counsel for Respondent

Darin D. Romaine, Buckeye
In Propria Persona

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MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

STARING, Judge:

¶1 Pursuant to a plea agreement, Romaine was convicted of unlawful flight from a law enforcement vehicle and two counts of conspiracy to commit sale or transportation of dangerous drugs. On one of the conspiracy counts and the flight count, the trial court sentenced him to “slightly aggravated,” concurrent sentences, the longest of which is ten years. It suspended the imposition of sentence on the remaining count of conspiracy and placed him on a two-year term of probation to begin upon release from confinement.

¶2 Romaine thereafter sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was “unable to find any claims for relief to be raised in post-conviction relief proceedings.” In a pro se, supplemental petition, however, Romaine argued he had received ineffective assistance of counsel and the state had breached a “preliminary hearing agreement.” He contended counsel had failed to inform him of a plea offer from the state, or at least improperly advised him that there would be an offer, but it would be rejected in favor of moving to a different court. He also claimed counsel did not explain to him that his sentence would be aggravated and counsel should have objected to the aggravating factors used.

¶3 Based on a request for an additional transcript, the court granted Romaine leave to file an amended petition. In that petition Romaine argued counsel had been ineffective in failing to inform him “that by signing the waiver of his right to a preliminary hearing he was placed in a ‘Fast Track Program’” and again asserted counsel had not informed him of a plea offer and had been ineffective in relation to his aggravated sentence. Reviewing both petitions, the

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trial court summarily denied relief, and denied Romaine's subsequent motion for rehearing.

¶4 On review, Romaine repeats his claims of ineffective assistance of counsel and contends the trial court abused its discretion in rejecting his claims that counsel was ineffective and that an offer for less time had been extended. Romaine specifically points to the affidavit he included with his petition for post-conviction relief in which he stated his attorney, Ulises Ferragut Jr., had advised him to reject a plea that would be offered at his preliminary hearing and, after the hearing, his attorney had told him the plea had been for "6 or 7 years." He contends the trial court abused its discretion in concluding this affidavit represented "wishful thinking" and argues an evidentiary hearing was required.

¶5 We agree with the trial court, however, that Romaine has not presented a colorable claim entitling him to an evidentiary hearing. To state a colorable claim, Romaine must do more than simply contradict what the record plainly shows. *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"). As the court pointed out, the transcript of the preliminary hearing, at which Romaine contends his counsel told him a six- or seven-year plea offer was made, clearly indicates that the state's offer was for 9.25 to 23.25 years and that Romaine stated he had been told about the offer and did not want to accept it. Thus, as the court concluded, many of Romaine's avowals are directly contradicted by the record. Furthermore, Romaine has provided no evidence to support a claim that counsel's advice to reject a plea offered at the preliminary hearing was deficient or that he was prejudiced thereby.

¶6 The trial court correctly identified the remainder of Romaine's claims and resolved them correctly in a thorough, well-reasoned minute entry, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose

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would be served by this court rehashing the trial court's correct ruling in a written decision").

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