

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ANGEL ANTONIO PEREZ,
Petitioner.

No. 2 CA-CR 2016-0199-PR
Filed August 11, 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NOT FOR PUBLICATION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 Pima County
No. CR20100321002
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Harriette P. Levitt, Tucson
Counsel for Petitioner

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MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Angel Perez 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 order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Perez has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Perez was convicted of felony murder and two counts of attempted armed robbery and sentenced to concurrent prison terms, the longest of which was a life sentence without the possibility of release for twenty-five years for the murder. His convictions stemmed from a robbery in which Perez shot one of the victims, killing him. On appeal, we affirmed his convictions and sentences but vacated a criminal restitution order entered at sentencing. *State v. Perez*, 233 Ariz. 38, 308 P.3d 1189 (App. 2013).

¶3 Perez sought post-conviction relief, claiming his trial counsel had been ineffective in relation to what he believed would be a "free talk" with the state. According to Perez's petition, he had been arrested for unrelated drug charges when he told counsel he had information about the murder. Counsel arranged what he understood would be a "free talk" with the state. Counsel did not attend the discussion, however, instead instructing his investigator to do so. At that session, a police detective advised Perez of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), which Perez waived. He then made inculpatory statements. The defense investigator stopped the interview once he realized the detectives believed Perez was a suspect in the murder.

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¶4 Perez asserted his counsel had been ineffective, *inter alia*, by allowing him to participate in the interview without properly advising him or evaluating his role in the murder, without obtaining written assurances his statements would not be used against him, and by failing to attend the interview. The trial court summarily denied relief. It concluded that, irrespective of counsel's conduct, Perez had voluntarily waived his rights and decided to answer questions. This petition for review followed.

¶5 On review, Perez asserts the trial court erred in summarily rejecting his claim of ineffective assistance of counsel and that he is entitled to an evidentiary hearing. A claim is colorable, thereby entitling a defendant to an evidentiary hearing, only if the "allegations, if true, would have changed the verdict." *State v. Krum*, 183 Ariz. 288, 292, 903 P.2d 596, 600 (1995). To state a colorable claim of ineffective assistance, "a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show prejudice, a defendant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

¶6 Even assuming, without deciding, that Perez has made a colorable claim that counsel's conduct fell below prevailing professional norms, he has made no claim of prejudice, let alone a colorable one. "If a defendant fails to make a sufficient showing on either prong of the *Strickland* test, the court need not determine whether the other prong was satisfied." *State v. Jackson*, 209 Ariz. 13, ¶ 2, 97 P.3d 113, 114 (App. 2004). In his petition below or on review, Perez has not described the statements he made during the interview, explained how those statements were used against him at trial, or developed any argument he would not have been convicted had those statements not been presented to the jury. Thus, his claim fails, and the trial court did not err in summarily rejecting it.

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¶7

Although we grant review, relief is denied.