IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CORY LEE BAKER,
Petitioner.

No. 2 CA-CR 2016-0275-PR
Filed October 12, 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NOT FOR PUBLICATION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 Cochise County
No. S0200CR201500006
The Honorable James L. Conlogue, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Peter A. Kelly, Palominas
Counsel for Petitioner

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Cory Baker seeks review of the trial court's order 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 abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Baker has not met his burden of demonstrating such abuse here.

¶2 Baker pled no contest to aggravated assault of a peace officer with a deadly weapon or dangerous instrument, and guilty to possession of a deadly weapon by a prohibited possessor. The trial court sentenced him to concurrent prison terms, the longer of which is nine years.

¶3 Baker filed a notice of post-conviction relief, followed by a "Petition for Writ of Error *Coram Nobis*," in which he asked to withdraw from his plea, asserting that, "at the time [he] was convicted and sentenced," the victim had been "engaged in misconduct serious enough to result in his eventual suspension from duty and the county attorney's decision that any case in which [the victim] was a necessary witness should be dismissed." The trial court denied the petition but further stated "[t]o the extent the petition is considered a request for post-conviction relief, it may be revised . . . pursuant to Rule 32.5 with an appropriate declaration and facts which could support a colorable claim for relief."

¶4 Baker then filed a "revised" petition for post-conviction relief and supporting memorandum. Citing *United States v. Fisher*, 711 F.3d 460 (4th Cir. 2013), he argued that, although the victim's alleged misconduct had not involved his case, his plea was

involuntary because he would not have pled guilty had he been aware of the victim's conduct. He additionally filed a motion seeking disclosure. After a hearing on the disclosure motion, the trial court denied the motion. It further concluded Baker's plea had been knowing, voluntary, and intelligent and that the misconduct evidence constituted "material impeachment evidence rather than any egregious misconduct by the State in this case." At Baker's request, the court "stayed" the proceeding so he could seek review in this court via special action.

¶5 Rather than seek special action relief, however, Baker filed a motion requesting an evidentiary hearing, claiming he had received files from the investigation of the victim's conduct as well as excerpts from his personnel file. He claimed that, based on those materials, "9 of the 11 charges against [the victim] had been 'sustained,'" including that he had an inappropriate sexual relationship with an informant and improperly removed evidence from a vehicle during a traffic stop and gave the evidence to the informant. Thus, Baker concluded, the victim's "misconduct cannot be viewed as simply 'impeachment' material." The trial court dismissed the petition for post-conviction relief, reiterating its conclusion that Baker's plea was voluntary and finding "[the victim's] misconduct is unrelated and extrinsic to the charges against [Baker]" and thus "could be nothing other than impeachment information in [Baker's] case." This petition for review followed.

¶6 On review, as below, Baker insists his plea was involuntary because he was not aware of the victim's misconduct. He again relies primarily on *Fisher*, in which the Fourth Circuit Court of Appeals determined a defendant's plea agreement was involuntary because the search warrant that ultimately led to his convictions was based on false statements made by the investigating officer. 711 F.3d at 463, 469. The court concluded that, in such "highly uncommon circumstances in which gross police misconduct goes to the heart of the prosecution's case," and reflected on the "integrity of the prosecution as a whole," the misconduct altered the defendant's evaluation of whether to plead guilty. *Id.* at 466, 469.

¶7 Even if we agreed with the reasoning in *Fisher*, it does not apply here. Baker acknowledges there is no evidence of misconduct by the victim that relates to his case—in contrast, the misconduct in *Fisher* went "to the heart of the prosecution's case." *Id.* at 466. He has cited no authority, and we find none, suggesting a police officer's misconduct wholly unrelated to the defendant's case somehow renders the defendant's guilty plea involuntary. Instead, the authority he cites addresses conduct directly related to the defendant's case. *See Von Moltke v. Gillies*, 332 U.S. 708, 718, 726-27 (1948) (plea invalid when defendant's "only legal counsel had come from FBI agents"); *Ferrara v. United States*, 456 F.3d 278, 291-92, 297 (1st Cir. 2006) (plea invalid when government "manipulated the [recanting] witness . . . into reverting back to his original version of events" and misled court and defense about his anticipated testimony).

¶8 Indeed, as the trial court correctly pointed out, Baker would not have been entitled to disclosure of the victim's misconduct in relation to the state's plea offer even had the prosecutor been aware of it. *See United States v. Ruiz*, 536 U.S. 622, 630-33 (2002) (due process does not require prosecution to disclose impeachment evidence before plea agreement). "A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action." *Brady v. United States*, 397 U.S. 742, 757 (1970). Baker's decision to plead no contest was not due to any impermissible conduct by the state or its agents.

¶9 Although we grant review, we deny relief.