IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAVID WAYNE BULLOCK,
Petitioner.

No. 2 CA-CR 2017-0002-PR
Filed April 12, 2017

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NOT FOR PUBLICATION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. CR20150306001
The Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

David Bullock, Eloy
In Propria Persona

MEMORANDUM DECISION

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

S T A R I N G, Presiding Judge:

¶1 Petitioner David Bullock 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 ruling unless the court clearly has abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no such abuse here.

¶2 Bullock pled guilty to aggravated taking the identity of another based on using the victim's Arizona Registrar of Contractors number ("number") to advertise his services as a handyman on the internet without the victim's consent, and for performing work for a third party. The trial court imposed a 4.5-year prison term. Bullock sought post-conviction relief and appointed counsel filed a notice stating she had found no "viable" claim to raise in post-conviction proceedings. Bullock then filed a pro se petition for post-conviction relief asserting his plea lacked a sufficient factual basis, he is actually innocent pursuant to Rule 32.1(h), Ariz. R. Crim. P., and trial counsel was ineffective by failing to adequately investigate his case and advise him of possible defenses, including consent and his status as subcontractor.[1] The court summarily denied relief.

¶3 On review, Bullock contends the trial court abused its discretion by improperly requiring he "prove" his claims without conducting an evidentiary hearing, which he equates with a "trial."

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[1]In an affidavit Bullock attached to his Rule 32 petition, he attested, inter alia, that if trial counsel "had correctly and truthfully advised [him] regarding the defenses [to the charges, he] never would have pleaded guilty."

He further asserts trial counsel's failure to explain potential defenses to him rendered his plea involuntary, and specifically contends, without factual support, that he had obtained "consent" to use the victim's number. He also argues had he "known . . . that consent was indeed a complete defense to the charges, he would not have pled guilty," and maintains he is entitled to an evidentiary hearing to create "a new record" on the issue of consent.

¶4 A defendant is entitled to an evidentiary hearing only if he presents a colorable claim. *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). Our supreme court has explained that "[t]he relevant inquiry" to determine whether a defendant has stated a colorable claim "is whether he has alleged facts which, if true, would *probably* have changed the verdict or sentence." *State v. Kolmann*, 239 Ariz. 157, ¶ 8, 367 P.3d 61, 64 (2016), *quoting State v. Amaral*, 239 Ariz. 217, ¶ 11, 368 P.3d 925, 928 (2016). Thus, "[i]f the alleged facts would not have probably changed the verdict or sentence, then the claim is subject to summary dismissal." *Id.*, *quoting Amaral*, 239 Ariz. 217, ¶ 11, 368 P.3d at 928. To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced him. *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¶5 We find no error in the trial court's determination that Bullock failed to state a colorable claim meriting post-conviction relief. We therefore adopt the court's thorough analysis, except as to the defense of consent claim, discussed below. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision"). Accordingly, because we conclude the court properly found Bullock had failed to assert any colorable claims meriting post-conviction relief, we reject his claim that he was entitled to an evidentiary hearing. *See D'Ambrosio*, 156 Ariz. at 73, 750 P.2d at 16. The decision whether a claim is colorable and

therefore warrants an evidentiary hearing "is, to some extent, a discretionary decision for the trial court." *Id.*

¶6 To the extent Bullock challenges the trial court's statement that, even if true, the defense of consent would not have been viable under A.R.S. § 13-2009(A)(2), we agree with the court's denial of this argument, albeit for a different reason. *Cf. State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court obliged to affirm trial court's ruling if result legally correct for any reason). Because the court correctly stated that the "facts and the record" established that the victim had not consented to let him use his number, and because Bullock has failed to provide any support for his assertion that such consent existed, the court correctly rejected this argument. *See State v. Donald*, 198 Ariz. 406, ¶ 21, 10 P.3d 1193, 1201 (App. 2000) (to warrant evidentiary hearing, Rule 32 claim "must consist of more than conclusory assertions"). The court expressly incorporated the grand jury transcript into the factual basis of the plea agreement. At that proceeding, evidence was presented that the victim had contacted the Registrar of Contractors to report someone was using his number to advertise services on the internet; the victim had not consented to let "anybody" use his number; and the victim was "very[] upset" to learn someone was using his number.

¶7 Finally, insofar as Bullock claims he is actually innocent, we note that a guilty plea generally precludes a claim of innocence. *See State v. Norgard*, 92 Ariz. 313, 315, 376 P.2d 776, 778 (1962) (characterizing as "frivolous" motion to withdraw from plea when "the only basis given . . . was that the defendant apparently changed his mind and claimed to be innocent"); *State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993) (pleading defendant waives all non-jurisdictional defects unrelated to validity of plea). But even assuming, without deciding, that Bullock could have raised a claim of actual innocence, because the trial court correctly determined that in his Rule 32 petition Bullock did "nothing other than deny the admissions that [he] made at the previous proceedings," we find no abuse of discretion in the court's denial of this claim.

¶8 Accordingly, we grant review but deny relief.[2]

[2]We likewise deny Bullock's request that we impose sanctions against the trial court judge.