

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

PAUL JACOB TADEO JR.,
Petitioner.

No. 2 CA-CR 2017-0042-PR
Filed April 24, 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NOT FOR PUBLICATION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
Nos. CR20134426001, CR20141545001, and CR20142938001
The Honorable Carmine Cornelio, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Jeffrey G. Buchella, Tucson
Counsel for Petitioner

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MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Petitioner Paul Tadeo Jr. 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 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). Tadeo has not sustained his burden of establishing such abuse here.

¶2 Pursuant to plea agreements in three causes, Tadeo was convicted of aggravated robbery, two counts of aggravated assault, and possession of a narcotic drug. The trial court imposed consecutive and concurrent terms of imprisonment totaling 17.5 years.¹

¶3 Tadeo thereafter sought post-conviction relief, arguing in his petition that his plea had been involuntary and he had received ineffective assistance of counsel. In an affidavit filed with his petition, he claimed his attorney had promised him he would receive a ten-year prison term and that he had not been “thinking clearly at the time of the change of plea” due to mental health issues and confusion

¹The trial court’s minute entry describes one sentence as seven years and six months, but it also describes the sentence as “presumptive” and in its oral pronouncement, the court stated that sentence was 7.5 years. We therefore correct the minute entry to reflect the statutory, 7.5-year presumptive sentence imposed at sentencing.

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about the plea. The trial court ordered an evidentiary hearing on the matter, and thereafter denied the petition for relief.

¶4 On review, Tadeo again asserts he did not understand the plea and received ineffective assistance of counsel, arguing the trial court abused its discretion in denying relief. After an evidentiary hearing, our review of the court’s factual findings “is limited to a determination of whether those findings are clearly erroneous”; we “view the facts in the light most favorable to sustaining the lower court’s ruling, and we must resolve all reasonable inferences against the defendant.” *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). When “the trial court’s ruling is based on substantial evidence, this court will affirm.” *Id.* And, “[e]vidence is not insubstantial merely because testimony is conflicting or reasonable persons may draw different conclusions from the evidence.” *Id.*; see also *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding).

¶5 Tadeo had the burden of proving his factual allegations by a preponderance of the evidence. Ariz. R. Crim. P. 32.8(c). And, the trial court was “the sole arbit[er] of the credibility of witnesses” at the evidentiary hearing. *Fritz*, 157 Ariz. at 141, 755 P.2d at 446; see also *Sasak*, 178 Ariz. at 186, 871 P.2d at 733 (“It is the duty of the trial court to resolve any conflicts in the evidence.”). Tadeo’s arguments on review amount to a request for this court to reweigh the evidence presented, which we will not do. Rather, because the trial court’s factual determinations were supported by evidence presented at the hearing, we cannot say the court abused its discretion in denying relief.

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