IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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THE STATE OF ARIZONA,
*Respondent*,

*v.*

STEF BORIS DAWOOD,
*Petitioner*.

No. 2 CA-CR 2017-0113-PR
Filed April 17, 2017

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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NOT FOR PUBLICATION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.

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Petition for Review from the Superior Court in Maricopa County
No. CR2011030533001SE
The Honorable Hugh Hegyi, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

Stef Dawood, Florence
*In Propria Persona*

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**MEMORANDUM DECISION**

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Howard and Judge Vásquez concurred.

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E C K E R S T R O M, Chief Judge:

**¶1** Stef Dawood 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 clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Dawood has not met his burden of demonstrating such abuse here.

**¶2** After a jury trial, Dawood was convicted of two counts of armed robbery and sentenced to concurrent 10.5-year prison terms for each offense. We affirmed his convictions and sentences on appeal. *State v. Dawood*, No. 1 CA-CR 12-0656 (Ariz. App. Aug. 29, 2013) (mem. decision). Dawood sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claims to raise in a petition for post-conviction relief. Dawood then filed a pro se petition raising various claims of ineffective assistance of counsel. Specifically, he asserted his trial counsel was ineffective in failing to (1) "object to the jury verdicts" when the jury had sent a note relating it was "deadlocked 8 to 4" and requesting more time, but nonetheless reaching its verdicts shortly thereafter; (2) "investigate" alleged prior convictions that he claimed would not constitute historical prior felony convictions; (3) file a motion for new trial "based upon the 13 questions from the jury"; (4) object to the answers given for various jury questions; (5) call as a witness the police officer who had conducted a photographic line up and an "expert" to "counter state expert(s)" related to that line up. Dawood also claimed his trial counsel had acted "unprofessional[l]y" during trial and had stated he was under the influence of a prescription painkiller during the proceedings. Finally, he asserted

his appellate counsel was ineffective in failing "to raise the jury questions on appeal" and that his Rule 32 counsel was ineffective.

**¶3** The trial court determined an evidentiary hearing was warranted to address whether counsel had been impaired during trial. After that hearing, the court found trial counsel had not been "using or impaired by narcotic drugs during the trial." The court summarily rejected Dawood's remaining claims. This petition for review followed.

**¶4** On review, Dawood summarizes several of his claims of ineffective assistance of trial and appellate counsel and asserts he is entitled to an evidentiary hearing. A defendant is entitled to a hearing only if he presents a colorable claim for relief, that is, "he has alleged facts which, if true, would probably have changed the verdict or sentence." *State v. Amaral*, 239 Ariz. 217, ¶¶ 10-11, 368 P.3d 925, 927-28 (2016). "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 this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *accord State v. Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d 61, 64 (2016); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "To establish deficient performance, a defendant must show that his counsel's assistance was not reasonable under prevailing professional norms, 'considering all the circumstances.'" *Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d at 64, *quoting Hinton v. Alabama*, ___ U.S. ___, ___, 134 S. Ct. 1081, 1088 (2014). "To establish 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.'" *Id.*, *quoting Hinton*, ___ U.S. at ___, 134 S. Ct. at 1089.

**¶5** On review, as below, Dawood has not identified any legal basis for the various objections Dawood asserts counsel should have raised. And, given that the two witnesses who participated in the photographic line up did not identify him, he has not established that counsel was ineffective in failing to call the police officer who conducted the line up or an expert witness, much less that it could have altered the verdicts had counsel done so. Nor has he identified

any legal authority supporting the argument he asserts appellate counsel should have raised.

**¶6** Dawood additionally asserts the trial court erred in finding trial counsel had not been impaired during his trial. 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.*

**¶7** The trial court's finding that counsel was not impaired during the trial is amply supported by the record. Trial counsel testified he had suffered a shoulder injury previous to or during trial but had not taken any prescription pain medication, only ibuprofen for inflammation. Although Dawood complains the dosage of ibuprofen counsel described is available only by prescription, he has identified no evidence supporting that claim, much less that the dosage would have impaired counsel. And the court was free to reject his testimony that counsel had told him about having been prescribed Vicodin. *See 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).

**¶8** Although we grant review, we deny relief.