

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

BILLY WAYNE HENDERSON JR.,
Petitioner.

No. 2 CA-CR 2017-0221-PR
Filed August 30, 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NOT FOR PUBLICATION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 Yavapai County
No. P1300CR201500456
The Honorable Tina R. Ainley, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Sheila S. Polk, Yavapai County Attorney
By George D. Rodriguez, Deputy County Attorney, Prescott
Counsel for Respondent

C. Kenneth Ray II, P.L.L.C., Prescott
By C. Kenneth Ray II
Counsel for Petitioner

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Eppich and Judge Howard¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Billy Henderson Jr. petitions for review of the trial court's order summarily dismissing his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. For the following reasons, we grant review, but we deny relief.

¶2 Pursuant to a plea agreement, Henderson was convicted of resisting arrest and disorderly conduct and placed on a three-year term of supervised probation. The charges against Henderson arose from an incident occurring in the Prescott Traffic Court. But the complaint and amended complaint against him, filed in Yavapai County's Seligman Precinct Justice Court, alleged the offenses occurred in that precinct, rather than in the Prescott Precinct.

¶3 At his initial felony appearance in justice court, bond was set, counsel was appointed, and Henderson was scheduled to appear for Early Disposition Court ("EDC") at the Yavapai County Courthouse in Prescott. He remained in custody until his EDC appearance. In that court, he waived a preliminary hearing, and the state filed an information that, like the complaints filed in the Seligman Justice Court, erroneously stated the offenses had occurred in the Seligman Precinct, rather than in Prescott. Henderson agreed to plead guilty to two of the five counts alleged in the state's

¹The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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information and admitted a factual basis that established the offenses had occurred in Prescott.

¶4 Henderson filed a timely notice of and petition for post-conviction relief in which he alleged (1) the justice court where he initially appeared lacked subject matter jurisdiction to commence the action because the offense had not occurred in that precinct; (2) because he was unaware that the complaint and information misstated the precinct where the offense had occurred, his guilty plea violated his right to procedural and substantive due process; and (3) an expert affidavit filed with his petition established his “actual innocence” of the offenses.

¶5 The trial court summarily dismissed the petition, finding that none of Henderson’s claims presented a material issue of fact or law and that no purpose would be served by any further proceedings. *See* Ariz. R. Crim. P. 32.6(c) (identifying standard for summary dismissal of Rule 32 petition). The court reasoned that even if the complaint had been filed in the wrong justice court, the superior court had jurisdiction to accept Henderson’s guilty plea, based on the information filed after Henderson waived his right to a preliminary hearing, and that plea “waive[d] all non-jurisdictional defenses and claims,” including defects in the charging documents. The court further concluded that the record clearly established that Henderson entered the plea knowingly, intelligently, and voluntarily, and that the impressions of an “expert,” upon review of a video of the incident, did not constitute “evidence of actual innocence.”² This petition for review followed.

¶6 On review, Henderson challenges the trial court’s dismissal of his petition, arguing that his guilty plea and conviction

²The trial court further noted that although Henderson “[did] not make a specific claim of ineffective assistance of counsel, [his] affidavit clearly challenge[d his] attorney’s performance.” We do not disagree with the court’s implicit conclusion that Henderson’s petition failed to state a colorable claim of ineffective assistance of counsel.

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are void for lack of subject matter jurisdiction, that the court “err[ed] in failing to consider evidence of [his] ‘actual innocence,’” and that he was denied procedural and substantive due process based on “the totality of circumstances presented.” We review a summary denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here.

¶7 In its order denying relief, the trial court clearly identified, thoroughly addressed, and correctly resolved the merits of Henderson’s claims, ruling in a manner sufficient to permit this or any other court to conduct a meaningful review. No purpose would be served by repeating the court’s full analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). In response to Henderson’s arguments on review, we add only that his citation to federal authorities in support of his “actual innocence” claim is unavailing. Under Rule 32.1(h), a defendant is entitled to such relief only if he “demonstrates by clear and convincing evidence that the facts underlying the claim would be sufficient to establish that no reasonable fact-finder would have found defendant guilty of the underlying offense beyond a reasonable doubt.” The court correctly concluded that, assuming Henderson has not waived such a claim by his guilty plea, the “expert” opinion affidavit filed with his petition fails to support a colorable claim for post-conviction relief.

¶8 Henderson has failed to establish the trial court abused its discretion in summarily dismissing his petition for post-conviction relief. *See Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d at 67. Accordingly, although review is granted, relief is denied.