

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

KEVIN LECIL CASTILLO,
Petitioner.

No. 2 CA-CR 2019-0061-PR
Filed August 21, 2019

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20101631001
The Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Harold L. Higgins PC, Tucson
By Harold L. Higgins
Counsel for Petitioner

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Eppich and Judge Eckerstrom concurred.

ESPINOSA, Judge:

¶1 Kevin Castillo seeks review of the trial court’s order summarily dismissing 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. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 Following a jury trial in absentia in 2013, Castillo was convicted of criminal damage, endangerment, driving while under the influence of intoxicating liquor, and driving with a blood alcohol concentration of .08 or greater. In 2016, the trial court sentenced Castillo to concurrent prison terms, the longest of which is 2.25 years. We affirmed Castillo’s convictions and sentences on appeal.¹ *State v. Castillo*, No. 2 CA-CR 2016-0085 (Ariz. App. Apr. 12, 2017) (mem. decision).

¶3 Castillo then filed a petition for post-conviction relief, claiming he was denied the right to due process, as established by newly discovered evidence. Specifically, a July 2018 report by a forensic psychologist opined that “if the final . . . incorrect[] assessment that Mr. Castillo was competent in September of 2011, resulted in his being allowed to make key decisions in his case . . . a grave injustice was done to Mr. Castillo.” Based in part on that report, Castillo contended he was not competent “at all important moments in this case,” including when he rejected a plea offer for an undesignated felony in February 2011. *See* Ariz. R. Crim. P. 32.1(e). He also asserted his trial attorneys were ineffective for failing to: ensure he understood the consequences of rejecting the state’s plea offer in February 2011, a few weeks before his attorney filed a motion

¹On appeal, Castillo argued the trial court erred in finding his absence from trial was voluntary and there was insufficient evidence to convict him of driving under the influence. *State v. Castillo*, No. 2 CA-CR 2016-0085 (Ariz. App. Apr. 12, 2017) (mem. decision).

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pursuant to Rule 11, Ariz. R. Crim. P.,² and to inform the trial court he was not competent when he rejected that plea; have Castillo reconsider the plea offer after he was restored to competency in September 2011; “seek[] an opinion of a psychologist . . . to point out the clear failures of the restoration program in this case”; and, inform the court of Castillo’s attempts to contact counsel before the trial in absentia.

¶4 He further argued sentencing counsel should have provided the trial court with more information about Castillo’s attempts to contact trial counsel before trial, asserting such information would have affected the court’s denial of his motion to vacate judgment by showing that he did not voluntarily absent himself from trial. In his petition below, Castillo asked the court to “vacate his conviction[s] and sentence[s] and order a new trial . . . or to order the reinstatement of an undesignated plea rejected when he was not competent.” The court summarily dismissed his claims and this petition for review followed.

¶5 On review, Castillo asserts his “main contention is that he was demonstrably not competent at the time he rejected a plea, which he would now accept. Once restored to competence, counsel never sought to provide him a new opportunity to accept the plea.”³ He also maintains the trial court should have found trial counsel ineffective for failing to seek the opinion of a psychologist to challenge the findings of the competency restoration program, reveal Castillo’s incompetence to the court, and inform the court about Castillo’s attempts to contact counsel before trial. Although Castillo asked for a new trial below, he does not reassert that request on review, but only asks that the undesignated plea offer be reinstated for his consideration, that we order his “conviction” vacated, and that we order a hearing to determine if his absence from trial was, in fact, voluntary.

¶6 Based on this record, we agree with the trial court that Castillo neither presented a colorable claim of newly discovered evidence nor established that his attorneys were ineffective or that his right to due process was violated because he was incompetent when he rejected the plea

²In May 2011, Castillo was found incompetent, but restorable.

³Although Castillo states on review that he would “now accept” the plea, in his sworn declaration, attached as an exhibit to his petition below, he stated he “was not adverse to taking a plea if the terms appeared to be fair.”

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offer. And because the court, in a thorough and detailed ruling, has addressed the issues raised “in a fashion that will allow any court in the future to understand the resolution[, and n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision,” we adopt its ruling. *State v. Whipple*, 177 Ariz. 272, 274 (App. 1993).

¶7 Accordingly, although we grant the petition for review, relief is denied.