

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ANGELA RENE LEEMAN,
Petitioner.

No. 2 CA-CR 2019-0197-PR
Filed February 12, 2020

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NOT FOR PUBLICATION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. CR042678
The Honorable James E. Marner, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Joel Feinman, Pima County Public Defender
By David J. Euchner, Assistant Public Defender, Tucson

and

Kevin M. Burke, Pima County Legal Advocate
By A. Kate Bouchee Verenna, Assistant Legal Advocate, Tucson
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 Angela Leeman seeks review of the trial court’s ruling summarily dismissing her petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., in which she argued that newly discovered material facts exist that probably would have changed her sentence. We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Leeman has not shown such abuse here.

¶2 After a jury trial, Leeman was convicted of thirteen counts of child abuse and one count each of methamphetamine possession and possession of drug paraphernalia. The trial court sentenced her to aggravated, presumptive, concurrent and consecutive prison terms totaling sixty-one years. The court found as mitigating that Leeman “was not yet 18 at the time of these offenses,” her codefendant’s “influence” over her, and that she had a “poor home life” and no previous criminal record. It found as aggravating the emotional and physical harm to the victim, the presence of an accomplice, the “extremely young age of the victim,” as well as “the especially heinous and cruel manner in which the offenses were committed,” Leeman’s substance abuse, and that she had victimized her own child. We affirmed her convictions on appeal but ordered that she be resentenced on some counts. *State v. Leeman*, No. 2 CA-CR 94-0364 (Ariz. App. Mar. 14, 1996) (mem. decision). She has since sought and been denied post-conviction relief several times.

¶3 In 2018, Leeman again sought post-conviction relief, arguing in her petition that recently discovered evidence corroborates her claims that she had been abused as a child and undermines her aunt’s statement, included in the presentence report, that she was a “pathological liar.” She asserted that, had the “sentencing court been aware of the true facts,” it would have imposed lesser sentences. The trial court summarily dismissed the petition; this petition for review followed.

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¶4 On review, Leeman asserts that the trial court erred by summarily dismissing her claims and that she is entitled to an evidentiary hearing. To establish a claim of newly discovered material facts under Rule 32.1(e), a defendant must show “that the evidence was discovered after trial although it existed before trial; that it could not have been discovered and produced at trial through reasonable diligence; that it is neither cumulative nor impeaching; that it is material; and that it probably would have changed the verdict” or sentence. *State v. Saenz*, 197 Ariz. 487, ¶ 7 (App. 2000). To be entitled to an evidentiary hearing, Leeman must have “alleged facts which, if true, would probably have changed” the outcome of her case. *State v. Amaral*, 239 Ariz. 217, ¶¶ 10-11 (2016) (emphasis omitted).

¶5 Assuming, without deciding, that Leeman has made a colorable claim that she could not have discovered the information corroborating her childhood abuse before trial, Leeman is not entitled to relief based on this evidence. Leeman has cited no statement by the sentencing court to support her assertion that “her allegations of abuse were discounted because she lacked corroboration” or that the court “gave little weight to that mitigation.”¹ The sentencing court noted Leeman’s difficult childhood, describing it as “terrible,” and did not indicate it found her credibility lacking. It further observed that the aggravating factors greatly outweighed the mitigating factors.² In the absence of any indication

¹Leeman claims that it is likely the sentencing court discounted this evidence because the state argued Leeman could not be believed. This argument is entirely speculative. It is at least equally likely that, had the court found incredible Leeman’s assertions about her childhood, it would have said so.

²Leeman asserts in passing that, in rejecting her claims, the trial court erred by “credit[ing]” the opinion of a treating physician included in the presentence report that the victim would have “permanent psychological effects” from the abuse he suffered. She claims that opinion violates Rule 702, Ariz. R. Evid. This argument disregards Arizona law. A court may review information submitted for sentencing purposes without regard to the evidentiary rules so long as the record “show[s] what the information consists of and where it comes from and must indicate that it has some substance above rumor, gossip or speculation.” *State v. Jones*, 147 Ariz. 353, 355 (1985); *see also* A.R.S. § 13-702(C) (allowing court to consider “any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial”); Ariz. R. Crim. P. 26.7(b)(2) (permitting party to introduce at sentencing “any reliable, relevant evidence, including hearsay, to show aggravating or mitigating

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the sentencing court discounted Leeman's statements about her abusive childhood, it is unlikely that corroborating information would have altered her sentence.

¶6 The presentence report indicated that Leeman's aunt, L.P., had described her as a "pathological liar." L.P. was later convicted of theft and served a jail term, apparently for conduct occurring near the time of Leeman's trial, and also had been a suspect in her husband's murder. Leeman claims these events constitute newly discovered facts that would have caused the trial court to discount L.P.'s claim that Leeman was a "pathological liar." Even were that true, however, Leeman has identified no statement by the sentencing court suggesting that Leeman's alleged lack of truthfulness affected the sentences imposed.

¶7 Although we grant review relief is denied.

circumstances, to show why the court should not impose a particular sentence, or to correct or amplify the presentence, diagnostic, or mental health reports"). Leeman does not contest that the victim suffered extreme emotional and physical harm.