

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

MICHAEL SEAN PITTS,
Petitioner.

No. 2 CA-CR 2019-0208-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NOT FOR PUBLICATION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. CR20130767001
The Honorable Michael J. Butler, Judge

REVIEW GRANTED; RELIEF DENIED

Michael Sean Pitts, Tucson
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Brearcliffe concurred.

V Á S Q U E Z, Chief Judge:

¶1 Petitioner Michael Pitts seeks review of the trial court’s ruling summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 After a jury trial, Pitts was convicted of three counts each of armed robbery and aggravated assault. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling 31.5 years. We affirmed his convictions and sentences on appeal. *State v. Pitts*, No. 2 CA-CR 2014-0434 (Ariz. App. July 18, 2016) (mem. decision). Thereafter, Pitts sought post-conviction relief, and appointed counsel filed a notice stating she was unable to find any colorable claims to raise in a Rule 32 petition. Pitts filed a pro se petition, alleging claims of ineffective assistance of counsel at the hearing on his motion to suppress and during trial. The court summarily denied relief. This petition for review followed.

¶3 On review, Pitts reasserts his claims of ineffective assistance of trial counsel. Specifically, he argues counsel was ineffective during the hearing on his motion to suppress the pretrial and trial identifications of him by (1) failing to investigate and prepare, (2) failing to impeach witnesses with prior statements concerning identification, and (3) acting as a “neutral observer.” With regard to the trial, Pitts maintains that counsel was ineffective by (1) failing to call an expert witness on identification, (2) failing to request a jury instruction, consistent with *State v. Dessureault*, 104 Ariz. 380 (1969), on the reliability of identification evidence, and (3) “[a]ssuming the position of . . . a neutral observer.” As they were below, many of Pitts’s arguments are based on his trial counsel’s assistance by a law student pursuant to Rule 38(d), Ariz. R. Sup. Ct.

¶4 “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below

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objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). “Failure to satisfy either prong . . . is fatal to an ineffective assistance of counsel claim.” *Bennett*, 213 Ariz. 562, ¶ 21.

¶5 Pitts argues the trial court erred in rejecting his claims of ineffective assistance at the hearing on his motion to suppress because neither counsel nor the Rule 38(d) law student was “aware that not all of the witnesses were able to positively identify [him] as their assailant.”¹ But the motion to suppress—signed by both counsel and the law student—described the pre-trial identifications and the uncertainties of the witnesses. *See* Ariz. R. Sup. Ct. 38(d)(5)(E) (imposing detailed requirements and duties on supervising attorney of law student). In addition, as the court pointed out in its ruling, the law student, who was accompanied by trial counsel, elicited testimony during the hearing “regarding problems each witness may have had with accurately seeing the suspect at the time of the robberies.”

¶6 Pitts additionally contends the trial court failed to consider his argument that trial counsel was ineffective for failing to request a *Dessureault* instruction. We disagree. As the trial court pointed out in its ruling, this court rejected Pitts’s related argument on appeal that the trial court had erred by failing to sua sponte give a *Dessureault* instruction, finding neither error nor prejudice resulted from any such error. *Pitts*, No. 2 CA-CR 2014-0434, ¶¶ 4, 10-12. The trial court “agree[d]” with this court that Pitts could not establish prejudice and, therefore, concluded he could not establish a colorable claim of ineffective assistance of counsel. *See Bennett*, 213 Ariz. 562, ¶ 21.

¶7 In its ruling, the trial court clearly identified, addressed, and correctly resolved each of Pitts’s claims of ineffective assistance of trial counsel. We therefore adopt that ruling. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”).

¹ Pitts also contends that counsel should have questioned the witnesses concerning a “clear conflict of interest” between a detective and a victim. However, this argument was not raised below. We therefore do not address it further. *See State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980).

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¶8 Accordingly, although we grant the petition for review, we deny relief.