

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

RONCO MICHAEL CARDENAS,  
*Petitioner.*

No. 2 CA-CR 2019-0279-PR  
Filed May 12, 2020

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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NOT FOR PUBLICATION  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. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR20160038001  
The Honorable John Hinderaker, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Harold L. Higgins P.C., Tucson  
By Harold L. Higgins  
*Counsel for Petitioner*

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MEMORANDUM DECISION

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

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ECKERSTROM, Judge:

¶1 Ronco Cardenas seeks review of the trial court’s ruling summarily dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P.<sup>1</sup> We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Cardenas has not shown such abuse here.

¶2 After a jury trial, Cardenas was convicted of second-degree burglary, attempted second-degree burglary, theft, and trafficking in stolen property. The trial court sentenced him to concurrent and consecutive prison terms totaling twenty-seven years. We affirmed his convictions and sentences on appeal. *State v. Cardenas*, No. 2 CA-CR 2017-0201 (Ariz. App. May 7, 2018) (mem. decision).

¶3 Cardenas sought post-conviction relief, first arguing that he had been “denied competent counsel” with regard to his plea, chiefly by granting his request to appoint new counsel, but then immediately requiring him to decide whether to accept a plea offer from the state. He also complained counsel had failed to give him “accurate and complete information” regarding calls he had made while in jail, asserting that he would have accepted the state’s plea offer had he been aware of the quantity and content of those calls.

¶4 He also claimed trial counsel had been ineffective in failing to object to the admission of those jail calls at trial and appellate counsel should have raised the issue. He further argued counsel should have asked

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<sup>1</sup> Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that “applying the rule or amendment would be infeasible or work an injustice.” *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

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for some “oversight from the court” when the recordings were made available to the jurors during deliberations. Cardenas also asserted counsel had been ineffective by failing to challenge the victim’s claimed ownership of a ring found among Cardenas’s belongings because the ring, in fact, belonged to Cardenas, and by failing to challenge the victim’s trial identification because the victim had seen him handcuffed in the back of a police car. Last, Cardenas asserted counsel had been ineffective at sentencing because he did not meet in person with him beforehand and did not file a sentencing memorandum.

¶5 The trial court summarily denied relief. The court noted Cardenas had not included any evidence, such as an expert’s affidavit, to support his claim that counsel’s conduct fell below prevailing professional standards. The court further observed that Cardenas had stated he understood the plea offers from the state and that he had been thoroughly advised at the settlement conference about the risk of trial. The court also concluded Cardenas had not shown a reasonable possibility the outcome would have changed had counsel acted differently. This petition for review followed.

¶6 On review, Cardenas repeats his claims and asserts he is entitled to an evidentiary hearing. A defendant is entitled to a hearing 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 (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 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶7 We first address Cardenas’s claim that he received ineffective assistance of counsel regarding his decision to reject the state’s plea offer. “[A] defendant may obtain post-conviction relief on the basis that counsel’s ineffective assistance led the defendant to make an uninformed decision to accept or reject a plea bargain, thereby making his or her decision involuntary.” *State v. Banda*, 232 Ariz. 582, ¶ 12 (App. 2013). Cardenas does not identify error in the core of the trial court’s ruling: that, notwithstanding his deteriorated relationship with counsel, the record shows he understood the plea offer and the risks of going to trial. Although Cardenas asserts his affidavit “fully reject[s]” the court’s finding, nothing in the affidavit suggests he did not understand the plea or that his decision

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to reject the plea was anything but voluntary.<sup>2</sup> Instead, the affidavit states only that he was unhappy with the plea offer and with counsel and believed a better plea offer had been previously discussed at the settlement conference. But Cardenas was informed no other plea offer was available, and he avowed to the court he had read the plea, understood it, and that counsel had answered his questions about it. And, although Cardenas asserts in his petition for review that it is “very clear” he “had a very imperfect understanding of the plea discussions,” he has not identified any provision of the plea offer he did not understand.<sup>3</sup>

¶8 Regarding his remaining claims of ineffective assistance, Cardenas again does not address the primary defect the trial court identified in those claims. As the court noted, he has provided no evidence, such as an expert affidavit, that counsel’s conduct fell below prevailing standards. Nor has he cited authority suggesting counsel’s conduct was deficient or attempted to argue that counsel’s decisions regarding trial strategy could have had no reasoned tactical basis. *See State v. Denz*, 232 Ariz. 441, ¶ 7 (App. 2013) (reasoned tactical decision by counsel cannot support claim of ineffective assistance). Additionally, as to his claim counsel should have challenged his identification, he does not assert that he told counsel the victim had seen him in custody and acknowledges there was no such evidence presented, nor does he contest the trial court’s

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<sup>2</sup>Cardenas also asserts in his affidavit that he would have accepted the plea offer had he been given access to recordings of his jail calls the state planned to introduce at trial. Even setting aside his curious assertion that he did not know the content of phone calls in which he had participated, he has not made a colorable claim. He has cited no authority suggesting that any competent attorney would have necessarily ensured he had access to those recordings before deciding whether to accept the state’s plea offer. We also note, as did the trial court, that he is not entitled to relief on his claim that counsel should have asked for more time to consider the plea. Even if we agreed counsel should have done so, Cardenas has not asserted the state would have been obligated to keep the offer open.

<sup>3</sup>Cardenas asserts that he “did not have even a fair grasp” of the plea offer because “he thought the charges had to run consecutive . . . , which is not a requirement” of the plea. But the plea offer he rejected states the sentences “shall run consecutively.”

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conclusion that his identity was not an issue at trial. The trial court did not err in summarily rejecting Cardenas's claims of ineffective assistance.<sup>4</sup>

¶9 We grant review but deny relief.

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<sup>4</sup>Cardenas asserts in passing that appellate counsel was ineffective for failing to challenge the admission of the jail calls. But, because trial counsel did not raise the issue, appellate counsel would have had to demonstrate any error was fundamental and prejudicial. *See State v. Escalante*, 245 Ariz. 135, ¶ 12 (2018). Cardenas has not argued the error was fundamental and thus has not shown he was prejudiced by counsel's omission. *See State v. Moreno-Medrano*, 218 Ariz. 349, ¶ 17 (App. 2008) (argument waived where defendant does not argue unpreserved error was fundamental).