IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

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THE STATE OF ARIZONA,
*Respondent*,

*v.*

WILLIAM ROBERT STEDCKE,
*Petitioner*.

No. 2 CA-CR 2019-0282-PR
Filed May 26, 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NOT FOR PUBLICATION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
Nos. CR20163933001 and CR20165348001
The Honorable James E. Marner, Judge

**REVIEW GRANTED; RELIEF DENIED**

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William R. Stedcke, Florence
*In Propria Persona*

**MEMORANDUM DECISION**

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

S T A R I N G, Presiding Judge:

**¶1** Petitioner William Stedcke seeks review of the trial court's order dismissing his petition for post-conviction relief, filed pursuant to Rule 33, Ariz. R. Crim. P.[1] "We will not disturb a trial court's ruling on a petition for post-conviction relief absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007). Stedcke has not sustained his burden of establishing such abuse here.

**¶2** Pursuant to a plea agreement, Stedcke was convicted in two causes of sexual exploitation of a minor under fifteen and sexual exploitation of a minor under fifteen in the second degree, both dangerous crimes against children, and luring a minor for sexual exploitation. The trial court sentenced him on February 12, 2018, to a 3.5-year prison term for luring, to be followed by a seventeen-year prison term for sexual exploitation and a lifetime term of probation for second-degree exploitation.

**¶3** Stedcke thereafter sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and was unable to find a claim to raise in post-conviction relief and asking to withdraw. The trial court granted the motion over Stedcke's objection and granted him time in which to file a pro se supplemental petition.

**¶4** In his supplemental petition, Stedcke argued he had received ineffective assistance of counsel based on counsel's having failed to investigate, having "withheld information" or "provided him with false

[1] 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.

information" in regard to accepting a guilty plea, and having moved the trial court to consolidate his cases. The court summarily denied relief.

**¶5** On review, Stedcke reasserts his claims of ineffective assistance of trial counsel.[2] "To state a colorable claim of ineffective assistance of counsel," Stedcke was required to "show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced [him]." *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). A pleading defendant who claims ineffective assistance "may only attack the voluntary and intelligent character" of his plea. *Tollett v. Henderson*, 411 U.S. 258, 267 (1973); *State v. Quick*, 177 Ariz. 314, 316 (App. 1993) (pleading defendant waives all claims of ineffective assistance except those "directly relating" to entry of his plea). To state such a claim, a defendant must show that counsel performed deficiently with respect to the decision to change his plea, *see Henderson*, 411 U.S. at 267, as well as a reasonable probability that, but for counsel's errors, he would not have entered the plea and would have insisted on going to trial, *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). To do so, a defendant must provide "an allegation of specific facts which would allow a court to meaningfully assess why that deficiency was material to [his] decision" to waive his rights. *State v. Bowers*, 192 Ariz. 419, ¶ 25 (App. 1998).

**¶6** Stedcke's first claim about counsel's lack of investigation relates to his exploitation charges. Those charges arose from a thumb drive containing "hundreds of images depicting prepubescent children engaged in sex acts and exploitative exhibition of their genitals." The thumb drive was found when police officers were called to Stedcke's home in October 2016 after a neighbor was found there in Stedcke's absence. The neighbor, G.R., was found with the thumb drive, which he told officers Stedcke had asked him to keep for him. A forensic search of Stedcke's computer established that the thumb drive had been attached to it and "numerous files depicting child erotica" were found in the Windows thumbnail cache. Analysis of the thumb drive showed that it had last been added to on the

[2]Stedcke argues he was denied his right to effective assistance of counsel when Rule 33 counsel filed a notice not raising any claims and was allowed to withdraw. He further contends counsel's failure to comply with the requirements recently set forth in Rule 33.6(c) rendered counsel ineffective. But a claim of ineffective assistance of Rule 33 counsel must be made in a second, timely proceeding, not in the instant proceeding. *See* Ariz. R. Crim. P. 33.16(c)(2)(B); *Osterkamp v. Browning*, 226 Ariz. 485, ¶ 19 & n.5 (App. 2011).

last date it was mounted to Stedcke's computer. Stedcke was charged with ten counts of sexual exploitation of a minor under fifteen.

**¶7** Stedcke alleges counsel failed to adequately investigate G.R. Noting that while the record as of October 17, 2016, showed G.R.'s computer had not been searched, the state had asserted in its response to his petition for post-conviction relief that it had been searched and no evidence of child pornography had been found, although the operating system had been installed after G.R. was found in Stedcke's home. Thus, he suggests, counsel should have investigated G.R. further, although he does not explain what exculpatory evidence might have been found. Because a claim of ineffective assistance in this context requires that a defendant show counsel's advice as to accepting the plea was deficient, when "the alleged error of counsel is a failure to investigate or discover potentially exculpatory evidence," prejudice will depend on "the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea," which, "in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." *Hill*, 474 U.S. at 59. In this case, we cannot say there is a likelihood that additional evidence as to G.R.'s use of the thumb drive would have been found, nor has Stedcke shown that any such evidence would have changed the outcome of a trial, given the evidence of the photographs having been viewed on his computer.

**¶8** Stedcke further contends trial counsel failed to adequately investigate the luring case. In that case, a detective from the Internet Crimes Against Children (ICAC) section of the Tucson Police Department came into contact with Stedcke after he responded to a Craigslist advertisement using the word "taboo." In a subsequent text conversation, Stedcke and the detective, who was pretending to be the father of a twelve-year-old girl, agreed to meet at a park for a sexual encounter with the girl. Stedcke maintains counsel should have investigated the "ICAC standards" that governed the task force investigation. He argues the officer with whom he had contact violated those standards and "prod[ded Stedcke] into doing what he wanted him to do." But again Stedcke does not show how evidence of the ICAC standards would have changed the outcome at a trial, particularly in view of his own statements and admissions to officers.

**¶9** Stedcke also argues trial counsel erred in moving to join the two cases and should have filed motions to dismiss on various grounds. Again, he has waived any such claim except insofar as it relates to the validity of his plea. *See Quick*, 177 Ariz. at 316. Stedcke has not explained

how the consolidation of his cases was relevant to his decision to enter a guilty plea, nor has he established that counsel's decisions in that regard were deficient.

**¶10** Stedcke further asserts that his conduct in the luring case did not meet the requirements of A.R.S. § 13-3554. Stedcke relies on our supreme court's decision in *Mejak v. Granville*, 212 Ariz. 555 (2006), but the statute has since been revised to eliminate the limitation discussed in that decision. 2007 Ariz. Sess. Laws, ch. 248, § 8. Any such motion filed by counsel would have failed.

**¶11** We likewise reject his claim that counsel should have filed a motion based on insufficient evidence that he had "possession and control" of the images on the thumb drive. The evidence here, data from the computer's thumbnail cache, showed Stedcke had viewed the photographs on his computer. The decision whether to challenge that evidence in a pretrial motion was a strategic one, and viewed in relation to the plea offer, we cannot say Stedcke has overcome the presumption that counsel's decision was proper. *See State v. Goswick*, 142 Ariz. 582, 586 (1984); *see also State v. Beaty*, 158 Ariz. 232, 250 (1988).

**¶12** For these reasons, we grant the petition for review, but deny relief.