

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

WILLIE JAMES LOVE JR.,
Petitioner.

No. 2 CA-CR 2020-0172-PR
File November 3, 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NOT FOR PUBLICATION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 Mohave County
No. CR201400553
The Honorable Derek Carlisle, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Harriette P. Levitt, Tucson
Counsel for Petitioner

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MEMORANDUM DECISION

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

B R E A R C L I F F E, Judge:

¶1 Willie Love Jr. seeks review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 33, Ariz. R. Crim. P.¹ We will not disturb that order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Love has not met his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement in 2017, Love was convicted of possession of narcotic drugs for sale. Consistent with the plea agreement, the trial court sentenced him to a fifteen-year term of imprisonment. Love initiated a proceeding for post-conviction relief, and the court appointed Rule 33 counsel. In June 2018, Love filed a petition, asserting that trial counsel had been ineffective by failing to inform him of a more favorable plea offer extended in 2014, with a stipulated prison sentence of ten years. He asked the court to vacate his conviction and sentence and to reinstate the 2014 plea offer. The court set the matter for an evidentiary hearing, but at that time the parties presented the court with a new plea agreement, explaining that they had reached a stipulation. The court, however, rejected the new plea agreement, explaining that it was “unwilling” to conduct a change of plea hearing without making a finding that Love had proven his claim of ineffective assistance of counsel. The court gave the state leave to contact Love’s trial counsel and gave Love leave to file a supplemental petition.

¹ Our supreme court amended the post-conviction relief rules, effective January 1, 2020. 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.’” *State v. Mendoza*, 249 Ariz. 180, n.1 (App. 2020) (quoting Ariz. Sup. Ct. Order R-19-0012). “Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.” *Id.*

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¶3 In his supplemental petition, Love argued that even if his first trial counsel had presented the 2014 plea offer to him, his second trial counsel had been ineffective in failing to learn of that offer and to argue for a more favorable offer in 2017. In addition, Love asserted that he had been incompetent to enter into the 2017 plea agreement. Love pointed out that he had previously been found incompetent in Nevada, and he relied on competency evaluations completed the month prior to the change of plea hearing.

¶4 After an evidentiary hearing, the trial court denied Love’s petition and supplemental petition. The court rejected Love’s claims of ineffective assistance of counsel, explaining that Love “was originally made aware of the [2014] offer” and, even if he was not, Love had suffered no prejudice because “the offer was withdrawn and he didn’t have the ability to take the offer anyway.” The court also rejected Love’s competency claim, pointing out that both doctors who had recently evaluated Love found him competent to stand trial and that the sentencing judge engaged in a “detailed” colloquy with Love during the change of plea hearing. This petition for review followed.

¶5 On review, Love contends the trial court abused its discretion in denying his petition because it “applied the wrong standard” in evaluating his competency claim.² He argues that “[c]ompetency to stand trial is a lower standard than competency to enter into a guilty plea” and that, although he was found competent to stand trial in the two evaluations, “both doctors found that he had serious mental deficiencies and that he needed to be on medication.” In addition, Love maintains that the court improperly found him competent because the sentencing judge “explained the plea-bargain process to him very thoroughly” when the issue was whether he “truly understood the judge’s explanation.”

¶6 Even if a trial court has found a defendant competent to stand trial, it must apply a different—more stringent—standard to find him competent to enter into a plea. *State v. Bishop*, 162 Ariz. 103, 104-105 (1989). “A defendant is not competent to plead guilty if the mental illness has

²Love does not reassert his claims of ineffective assistance of counsel on review. We therefore do not address them further. *See* Ariz. R. Crim. P. 32.16(c)(2)(B) (petition for review must contain “issues the trial court decided that the defendant is presenting for appellate review”); *see also State v. Bolton*, 182 Ariz. 290, 298 (1995) (failure to argue claim constitutes waiver of claim).

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substantially impaired his ability to make a reasoned choice among the alternatives presented to him and understand the nature of the consequences of his plea.” *Id.* at 105 (quoting *Sieling v. Eyman*, 478 F.2d 211, 214 (9th Cir. 1973)). On review, we must determine whether reasonable evidence supports the trial court’s finding that the defendant was competent to plead guilty. *State v. Djerf*, 191 Ariz. 583, ¶ 35 (1998). In doing so, we consider the facts in the light most favorable to sustaining the finding. *Id.*

¶7 Contrary to Love’s assertion, the trial court did not apply the wrong standard when considering Love’s competency claim. The court explained that competency to stand trial “is a different standard under *Bishop*, but it can be given some weight” when considering competency to enter into a plea. The court properly considered the doctors’ competency evaluations, which were completed less than a month before he pleaded guilty. *See Bishop*, 162 Ariz. at 105 (“Although competency to stand trial is a lower standard than competency to enter a plea, the fact that the mental health experts found defendant competent for the lesser standard is of some evidentiary weight on defendant’s competency to waive his rights.”). Notably, as the court pointed out, one of those doctors also concluded that Love was “competent to evaluate possible plea bargains in his case.”

¶8 In addition, the trial court’s consideration of the colloquy during the change of plea hearing, which included Love’s statement that he was “just trying to understand all of this,” was proper. *See Bishop*, 162 Ariz. at 105 (defendant’s conduct at hearings “has evidentiary value”). In order to determine if Love understood the nature of the consequences of his guilty plea, the court also had to consider whether he had been made aware of them.

¶9 Love seems to focus on the need for his medication, which he was not receiving at the time of the change of plea hearing. But neither of the doctors who concluded that Love was competent to stand trial conditioned that finding on his receiving the medication.³ And Love otherwise presented no evidence to support his assertion.

¶10 Love’s counsel at the time of the change of plea hearing stated that he, his associate, and his paralegal “all believed that [Love] was

³One doctor recommended that continuing the medication was a “prudent course of action,” while the other only suggested that Love needed the medication for his seizure disorder.

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competent and understood exactly what was going on.” To the extent Love testified otherwise, it was a question of credibility reserved for the trial court. *See State v. Fritz*, 157 Ariz. 139, 141 (App. 1988). Reasonable evidence supports the finding that Love was competent to enter into the plea agreement. *See Djerf*, 191 Ariz. 583, ¶ 35. The court thus did not abuse its discretion in denying his petition. *See Roseberry*, 237 Ariz. 507, ¶ 7.

¶11 Accordingly, we grant review but deny relief.