IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

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THE STATE OF ARIZONA,
*Respondent*,

*v.*

JOHN CLINTON SAVAGE,
*Petitioner*.

No. 2 CA-CR 2020-0215-PR
Filed December 10, 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NOT FOR PUBLICATION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 Yavapai County
No. P1300CR920184
The Honorable Tina R. Ainley, Judge

**REVIEW GRANTED; RELIEF DENIED**

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John Clinton Savage, Florence
*In Propria Persona*

## MEMORANDUM DECISION

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

E C K E R S T R O M, Judge:

**¶1** John Savage seeks review of the trial court's ruling summarily dismissing 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). Savage has not shown such abuse here.

**¶2** In 1993, Savage pled guilty to three counts of attempted child molestation. The trial court imposed consecutive, fifteen-year prison terms for two of those convictions and, for the third, suspended the imposition of sentence and placed Savage on lifetime probation. Before this proceeding, Savage has sought and been denied post-conviction relief at least three times, the last time in 2009.

**¶3** Savage was released from prison to probation in September 2017. In May 2018, Savage admitted violating the terms of his probation. The trial court revoked probation and sentenced Savage to a twelve-year prison term. Savage sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record but found no claims to be raised in a post-conviction proceeding.

**¶4** Savage filed a pro se petition arguing that, since his probation term started when he was sentenced in 1993, he was entitled to credit against his current prison term. He further asserted his trial counsel had

[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.*

been ineffective for failing to argue the terms of probation he violated were not imposed at the time of sentencing in 1993 and for failing to correct purported errors in sentencing memoranda filed by the state, specifically that they stated his probation term was to begin when he completed his prison terms and that he was required to register as a sex offender. The trial court summarily dismissed the proceeding. This petition for review followed.

**¶5** On review, Savage largely repeats his claims. We first address his argument that he is entitled to credit against his current sentence for his previous incarceration because the trial court ordered his probation term to begin at the time of his 1993 sentencing. Although Savage is correct that the 1993 sentencing minute entry states his term of probation was to begin as of that date, he is not entitled to credit. As the state pointed out below, A.R.S. § 13-903(E) provides that a term of imprisonment for one offense "shall not satisfy" a probation term imposed for another offense. And, Savage was not in custody "pursuant to" the count for which he was placed on lifetime probation while serving the prison terms imposed for his other counts; thus, he is not entitled to credit against his current prison term. *See* A.R.S. § 13-712(B).

**¶6** Savage also repeats his argument that his trial counsel was ineffective for failing to object to "erroneous information" provided by the state regarding sentencing and for failing to raise various purported sentencing errors.[2] "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) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim." *Id.*

**¶7** We find no error in the trial court's summary rejection of this claim. Savage does not address the court's determination that it would have imposed the same sentence even if counsel had "point[ed] out any errors in the pre-dispositional progress report." Thus, even had counsel been ineffective, Savage has not shown prejudice. *See id.* Savage's additional argument that counsel should have objected to his sentence "because he had already served probation" while incarcerated also merits

[2]Savage has abandoned his argument that counsel was ineffective for failing to argue that he was not bound by certain probation terms because they were not imposed until his release from prison.

summary rejection. As we have explained, Savage is not entitled to credit. Last, although Savage complains that counsel did not object "to the fact that [Savage] was never court-ordered to register as a sex offender," no such order was necessary. Savage is required to register pursuant to A.R.S. § 13-3821(A).

**¶8** We grant review but deny relief.