

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CEZAN C. ARMENTA,
Petitioner.

No. 2 CA-CR 2020-0209-PR
Filed January 13, 2021

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NOT FOR PUBLICATION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. CR20153960003
The Honorable Deborah Bernini, Judge

REVIEW GRANTED; RELIEF DENIED

Cezan Armenta, Florence
In Propria Persona

MEMORANDUM DECISION

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

ESPINOSA, Presiding Judge:

¶1 Cezan Armenta 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. We will not disturb that ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Armenta has not met his burden of establishing such abuse here.

¶2 After a jury trial, Armenta was convicted of six counts of sale of a dangerous drug (methamphetamine). The trial court found he had three historical prior felony convictions and sentenced him to concurrent, presumptive prison terms of 15.75 years. Armenta also pled guilty to possession of a deadly weapon by a prohibited possessor, for which the court imposed a stipulated 3.5-year prison term, concurrent with the 15.75-year terms. We affirmed the convictions and sentences on appeal. *State v. Armenta*, No. 2 CA-CR 2018-0245 (Ariz. App. Aug. 14, 2019) (mem. decision).

¶3 In January 2020, Armenta filed a petition for post-conviction relief, arguing that trial counsel had been ineffective in failing to advise him about a plea agreement extended in June 2017.¹ Armenta maintained that had counsel informed him he was eligible for release under the plea after serving eighty-five percent of the sentence imposed, while he would have to serve a day-for-day sentence upon conviction at trial, he would have accepted the plea. In response, the state acknowledged that the plea agreement contained “standard language describing how a defendant sentenced to prison must serve at least 85% of the time.” But the state argued that language did not apply here because the intent was to have Armenta plead guilty to two counts of sale of methamphetamine, which “requires mandatory flat time or a calendar year sentence,” pursuant to

¹Armenta had four attorneys during the trial proceedings. Counsel at the time of the June 2017 plea was his third attorney.

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A.R.S. § 13-3407(F).² The state attached an affidavit from trial counsel, who avowed he had explained to Armenta “the plea and trial exposure would result in the same type of sentence” but “the number of years would be higher at trial.”

¶4 The trial court summarily dismissed the petition. It observed, “Regrets about refusing a plea agreement that was explained by both counsel and the court are not legal grounds to grant post conviction relief.” The court further explained that because “[t]he rejected plea would also have resulted in a flat time sentence,” Armenta had “failed to show that the outcome on that issue would have been any different even if the Court were persuaded that trial counsel was ineffective in explaining the plea.” This petition for review followed.

¶5 “[A] petition that fails to state a colorable claim may be dismissed without an evidentiary hearing.” *State v. Kolmann*, 239 Ariz. 157, ¶ 8 (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) (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.” *Bennett*, 213 Ariz. 562, ¶ 21.

¶6 On review, Armenta maintains the trial court erred in dismissing his petition without an evidentiary hearing. He points out that he avowed trial counsel had failed to advise him that he “risked getting a flat-time sentence if [he] lost [at] trial versus 85% on the plea.” In addition, he argues “the record at the *Donald* hearing matched up with [his] assertions” and counsel “did not remember if he advi[s]ed [Armenta] of facing flat-time.”³ Armenta thus reasons “nothing in the record conflicted with [his] assertions that counsel failed to properly advise [him] of flat-time” and the court “should have took [his] assertions as true.”

²Section 13-3407(F) provides that a person convicted of sale of methamphetamine “is not eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the person has served the sentence imposed by the court, the person is eligible for release pursuant to [A.R.S.] § 41-1604.07 or the sentence is commuted.”

³*State v. Donald*, 198 Ariz. 406 (App. 2000).

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¶7 Armenta is correct that, generally, when determining if a claim is colorable, the trial court must treat a defendant's factual allegations as true. See *State v. Jackson*, 209 Ariz. 13, ¶ 6 (App. 2004); see also *State v. Donald*, 198 Ariz. 406, ¶ 17 (App. 2000). But the trial court determined, even assuming Armenta's factual allegations were true and counsel had been deficient in advising Armenta about the plea, Armenta could not establish prejudice because both under the plea agreement and at trial he faced a flat-time sentence.⁴ We agree. See *State v. Hasson*, 217 Ariz. 559, ¶¶ 1, 13-18 (App. 2008) (defendant who pled guilty of transportation of methamphetamine for sale must serve flat-time or calendar-year sentence and not eligible for early release credits); see also *State v. Scalph*, 245 Ariz. 177, ¶ 11 (App. 2018) ("Because the jury convicted Scalph of possession of methamphetamine for sale, A.R.S. § 13-3407(F) required the court impose a flat-time sentence.").

¶8 Moreover, trial counsel avowed he had explained to Armenta that "the plea and trial exposure would result in the same type of sentence" and that "the number of years would be higher at trial." Counsel also stated that Armenta's "reasons for rejecting the plea w[ere] the alleged legal deficiencies in the State's case and not whether the sentence was 85% or flat time." We therefore do not see how counsel "failed to give information necessary to allow [Armenta] to make an informed decision whether to accept the plea." *Donald*, 198 Ariz. 406, ¶ 16. Based on the record before us, we cannot say the court abused its discretion in summarily dismissing Armenta's petition. See *Roseberry*, 237 Ariz. 507, ¶ 7.

¶9 Accordingly, although we grant review, relief is denied.

⁴Armenta also suggests he was entitled to early release after serving eighty-five percent of his sentence "because it[']s common knowledge that in the plea bargaining process anything goes." He is mistaken, however, because "trial courts lack authority to impose an illegal sentence," even one stipulated to in a plea agreement. *State v. Robertson*, 249 Ariz. 256, ¶¶ 23-24 (2020).