

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EULANDAS FLOWERS,
Petitioner.

No. 2 CA-CR 2021-0051-PR
Filed October 5, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201500924
The Honorable Steven J. Fuller, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Geraldine L. Roll, Deputy County Attorney, Florence
Counsel for Respondent

Eulandas Flowers, Buckeye
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 Eulandas Flowers 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). Flowers has not shown such abuse here.

¶2 After a jury trial, Flowers was convicted of three counts of promoting prison contraband, and the trial court sentenced him to presumptive, concurrent and consecutive prison terms totaling 11.5 years.¹ We affirmed Flowers’s convictions and sentences on appeal. *State v. Flowers*, No. 2 CA-CR 2018-0124 (Ariz. App. Aug. 13, 2019) (mem. decision).

¶3 Flowers sought post-conviction relief, and appointed counsel filed a notice stating he had found no colorable claims to raise under Rule 32. In December 2020, Flowers filed a pro se petition, arguing he was entitled to an evidentiary hearing on the following claims: he had received ineffective assistance of counsel at sentencing; the trial court had committed fundamental error at sentencing; the prescreen process, pursuant to Rule 11, Ariz. R. Crim. P., violated his due process rights; he was entitled to be released under the Eighth Amendment because he had been exposed to and had contracted the COVID-19 virus while he was incarcerated; and there had been a violation of *Brady v. Maryland*, 373 U.S. 83, 87 (1963).² The court summarily dismissed Flowers’s petition and his request for findings of fact

¹ The trial court ordered Flowers’s sentences to be served consecutively to the natural life sentence he has been serving since 1996.

² Although Flowers suggested below that the *Brady* claim was based on newly discovered evidence, he does not raise that aspect of his claim on review. We thus do not address it further.

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and conclusions of law, and subsequently denied his motion for rehearing. This petition for review followed.

¶4 On review, Flowers first argues the trial court erred by dismissing his petition without an evidentiary hearing, in particular, his claim of ineffective assistance of sentencing counsel.³ The core of Flowers's ineffective assistance claim is that attorney Chester Lockwood did not heed his suggestions "stating how a sentencing memorandum should be made" and that Lockwood submitted a sentencing memorandum that contained factual inaccuracies. Specifically, Flowers points out that Lockwood's memorandum incorrectly stated he had been "sentenced to death" and had spent the majority of his time in prison "on death row." Flowers also maintains that Lockwood did not conduct adequate discovery to present mitigating evidence at sentencing, despite Flowers having urged him to do so. He asserts Lockwood's performance was deficient and suggests, without any factual support, that it prejudiced him.

¶5 A defendant is entitled to an evidentiary hearing on a claim of ineffective assistance of counsel if the claim is colorable. *State v. Bennett*, 213 Ariz. 562, ¶ 17 (2006). To establish such a claim, "a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *Id.* ¶ 21; *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). If the defendant fails to establish either prong, the claim fails. *Strickland*, 466 U.S. at 697; *Bennett*, 213 Ariz. 562, ¶ 21. In considering whether counsel's performance fell below objectively reasonable standards, the trial court "must indulge a strong presumption" that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Strickland*, 466 U.S. at 689-90. And to demonstrate prejudice, the defendant must "show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

¶6 We initially note, and the state acknowledges, that Lockwood incorrectly stated Flowers had been sentenced to death and that he had spent time on death row. However, Flowers has not explained how he was prejudiced by Lockwood's misstatements, *see Bennett*, 213 Ariz. 562, ¶ 21, nor has he explained what mitigating evidence or "facts relevant to the

³ Although Flowers represented himself at trial, the trial court granted his request that advisory counsel represent him at sentencing.

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sentencing” Lockwood should have or could have presented on his behalf.⁴ Notably, the trial court presumably was aware that Flowers was serving a life sentence, as that fact was accurately provided in several of the documents the court had considered, including the presentence report.

¶7 In addition, Flowers’s own sentencing statement, which the court expressly had considered, included details regarding his sentence and an exhibit describing a childhood accomplishment before he was incarcerated. And, although the presentence report stated that Flowers had incurred thirty violations in prison between 1997 and 2017, Lockwood nonetheless presented mitigating evidence, including details regarding Flowers’s difficult childhood. For all of these reasons, we conclude the court did not abuse its discretion in summarily dismissing Flowers’s claim of ineffective assistance of sentencing counsel.

¶8 Flowers next argues the trial court committed fundamental error at sentencing, essentially denying him counsel, when it stated, “[L]et’s hear from Mr. Flowers, you’re still running the show. How do you want to proceed from your side?” After Flowers stated he did not have anything to say, Lockwood argued on his behalf. Flowers has not identified any error. Although he was given an opportunity to speak, he was represented by counsel during the proceeding. And, although perhaps inartful, the court’s comment that Flowers was “running the show” does not suggest that any error occurred.⁵

¶9 In a related argument, Flowers contends that, by considering Lockwood’s inaccurate sentencing memorandum, the trial court improperly permitted “non-factual statements” to be introduced at sentencing. This claim is precluded. *See* Ariz. R. Crim. P. 32.2(a)(3). Moreover, the court stated it had read and considered the presentence report, the criminal history, the state’s sentencing memorandum, and “defendant’s statement for sentencing, as well as the attached exhibits.” Flowers has not explained, much less argued, how the court erred by failing

⁴In fact, when the trial court gave Flowers the opportunity to say anything at sentencing, he declined to do so.

⁵And, as the state points out in its response to the petition for review, the trial court’s inquiry was reasonable in light of the fact that Flowers had filed a pro se sentencing memorandum *after* requesting that counsel represent him at sentencing.

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to expressly point out the discrepancies in the evidence it considered, or that the noted inaccuracies impacted the sentences imposed.

¶10 Flowers also reasserts his claim that the state failed to disclose information, specifically an “SSU memo” that is favorable to him, in violation of *Brady*, 373 U.S. at 87. This claim is likewise precluded because Flowers could have, but did not, raise it on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3). Flowers also reargues that his due process rights were violated because a corrections officer was present during the Rule 11 prescreen procedure.⁶ To the extent this claim is cognizable under Rule 32, it is also precluded pursuant to Rule 32.2(a)(3).

¶11 Finally, Flowers claims he is entitled to be released because he was exposed to and contracted the COVID-19 virus as a result of the Arizona Department of Corrections’ indifference to the welfare of incarcerated individuals under its care. However, such a claim is not cognizable under Rule 32.1. *See* Ariz. R. Crim. P. 32.1(d) cmt. (rule “not intended to include challenges to the conditions of imprisonment or correctional practices”). Moreover, neither below nor on review has Flowers indicated upon which Rule 32.1 ground for relief this claim is based. We therefore find no abuse of discretion in the trial court’s summary dismissal of this claim.⁷

¶12 Accordingly, we grant review but deny relief.

⁶ The order directing that a Rule 11 prescreen evaluation be conducted pursuant to Flowers’s motion for such evaluation provided, in relevant part, that “[t]he meeting shall be confidential and take place in a room that allows for privacy. If requested, the door to the room shall remain closed.” Based on the report submitted following that evaluation, the trial court found Flowers competent to stand trial.

⁷ Flowers also suggests the trial court erred by issuing “a one-sentence order summarily dismissing the petition” without explaining its reasoning. But in post-conviction proceedings, the court is entitled to summarily dismiss precluded and untimely claims, as well as those that fail to present a material issue of fact or law that would entitle the defendant to relief. *Compare* Ariz. R. Crim. P. 32.2(b), 32.11(a) (discussing summary dismissal), *with* Ariz. R. Crim. P. 32.13(d)(1) (requiring specific findings of fact and conclusions of law after evidentiary hearing).