

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

CALEB OLIVER GLEAVE-RILEY FKA JOSEPH BRANDON ANDERSON,  
*Petitioner.*

No. 2 CA-CR 2021-0095-PR  
Filed March 30, 2022

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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NOT FOR PUBLICATION  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 Cochise County  
No. CR201700221  
The Honorable John F. Kelliher Jr., Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Brian McIntyre, Cochise County Attorney  
By Michael Powell, Deputy County Attorney, Bisbee  
*Counsel for Respondent*

Janelle A. Mc Eachern, Chandler  
*Counsel for Petitioner*

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MEMORANDUM DECISION

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

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ESPINOSA, Judge:

¶1 Caleb Gleave-Riley 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 order unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). Gleave-Riley has not shown such abuse here.

¶2 After a jury trial, Gleave-Riley was convicted of attempted fraudulent schemes and artifices, forgery, making a false statement as to financial condition or identity, credit card theft, second-degree money laundering, fraudulent schemes and artifices, identify theft, and nine counts of attempted credit card theft. The trial court sentenced him to concurrent and consecutive prison terms totaling sixty-eight years. We affirmed his convictions and sentences on appeal. *State v. Anderson*, No. 2 CA-CR 2019-0074 (Ariz. App. June 3, 2020) (mem. decision).

¶3 Gleave-Riley sought post-conviction relief, asserting his trial counsel had been ineffective by encouraging him to decline a plea offer from the state that would have called for a five-year prison term. In his attached affidavit, he claimed he initially had been charged with five offenses, the state had offered a plea “for five years in prison,” and trial counsel had told him the state would bring additional charges if he rejected the state’s offer and recommended he reject the state’s offer, which he did. He also alleged trial counsel did not tell him he “could wind up with 68 years in prison” by rejecting the plea, nor that the “case against [him] was strong,” instead telling him the additional charges were a “scare tactic” and he would prevail at trial. The trial court summarily dismissed Gleave-Riley’s petition. This petition for review followed.

¶4 On review, Gleave-Riley repeats his claim and asserts he is entitled to an evidentiary hearing. “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

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(2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). “[A] defendant may obtain post-conviction relief on the basis that counsel’s ineffective assistance led the defendant to make an uninformed decision to accept or reject a plea bargain, thereby making his or her decision involuntary.” *State v. Banda*, 232 Ariz. 582, ¶ 12 (App. 2013). A defendant must show he would have acted differently absent counsel’s error. *See id.* ¶¶ 11-12.

¶5 The record shows that, at an early resolution conference, the state offered Gleave-Riley an agreement under which he would admit having committed two offenses and would receive consecutive prison terms totaling five years. The prosecutor noted there would be “more charges” not encompassed by the agreement. The trial court advised Gleave-Riley he could face over fifty years in prison if convicted of the current charges. Thus, despite Gleave-Riley’s affidavit, the record demonstrates he was aware that the state’s plea offer would not resolve all charges against him and that he could face a lengthy prison term upon conviction—even absent additional charges. To obtain an evidentiary hearing, Gleave-Riley must do more than simply contradict the record. *See State v. Jenkins*, 193 Ariz. 115, ¶ 15 (App. 1998).

¶6 Gleave-Riley does not specifically allege counsel misadvised him about the strength of the state’s case or the effect of additional charges before he rejected the plea offer; instead, his affidavit suggests counsel made those statements only after the early resolution hearing. Additionally, although Gleave-Riley seems to suggest counsel should have pursued a new plea agreement, nothing in the record suggests the state would have offered one. And the record shows the state was unwilling to keep the initial offer open. In sum, Gleave-Riley has identified no deficiency in counsel’s conduct that caused him to reject the plea offer. *See Banda*, 232 Ariz. 582, ¶ 12. And, in any event, he has provided no evidence that competent counsel necessarily would have advised him to accept the plea offer—despite not knowing the nature of any forthcoming charges. The trial court did not err in summarily dismissing his petition.

¶7 Although we grant review, relief is denied.