

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
FEB -5 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0198-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
AARON ANTONIO BEALE,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR200500667

Honorable James L. Conlogue, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Edward G. Rheinheimer, Cochise County Attorney
By Valerie K. Aronoff

Bisbee
Attorneys for Respondent

Jeffrey G. Buchella

Tucson
Attorney for Petitioner

V Á S Q U E Z, Judge.

¶1 Pursuant to a plea agreement, Aaron Antonio Beale pled guilty to possession and transportation of a dangerous drug for sale, possession of a deadly weapon during the commission of a felony offense, possession of a deadly weapon as a prohibited possessor, and possession of drug paraphernalia. It is undisputed that the sentence the trial court imposed, a combination of concurrent and consecutive, presumptive and slightly aggravated prison terms totaling fifteen years, was consistent with the plea agreement. Beale filed a petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., encompassing this case and CR200400391. After an evidentiary hearing, the trial court denied relief in both cases in separate minute entry orders, and this petition for review followed.¹ We grant review to determine whether the trial court’s denial of post-conviction relief constituted an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). We deny relief.

¶2 Initially, Beale contends the trial court erred by “treating his Petition for Post-Conviction Relief, as raising separate claims in the two case numbers.” Although the cases have issues in common and the trial court held a joint evidentiary hearing on the post-conviction claims, the cases were never consolidated below. Beale does not cite nor have we found any authority requiring the trial court to treat the cases as consolidated for

¹Beale filed a separate petition for review in CR200400391, which we address in a separate memorandum decision.

purposes of post-conviction relief. Thus, we find no error in the trial court's failure to do so.

¶3 As noted above, Beale's convictions in this case resulted from a plea agreement, which was negotiated in April 2006, after his trial in CR200400391. Beale's petition alleged ineffective assistance of counsel in connection with an earlier agreement that, if it had been accepted, would have resolved that case and this one and resulted in sentences for both cases totaling nine years. He claimed counsel's inadequate explanation of that agreement to him had resulted in an aborted change-of-plea hearing and ultimately in the loss of the opportunity to plead guilty pursuant to that agreement. The trial court denied relief in CR200400391 after it found Beale had failed to show counsel had performed deficiently or that such performance had resulted in prejudice. The court denied relief in this case, noting Beale had "raise[d] no issue regarding the plea negotiations in April, 2006" or "claimed infirmity in any part of the entry of the plea or sentencing resulting from the April, 2006 plea agreement." Because "[t]here was no ineffective assistance of counsel in the ultimate plea agreement entered in this case," the court concluded Beale had "presented no grounds which would allow the Court to set aside the agreement he entered into."

¶4 In his petition for review, Beale contends the trial court "ignored the testimony and evidence in the record" demonstrating that he had only "agree[d] to a sentence of fifteen years as a result of the first plea falling through." He claims "the trial court abused its

discretion and erred as a matter of law in fashioning a cramped definition of the term ‘prejudice’” that “required [him to] proceed to trial in [this case] and receive a greater sentence than he would have under the original plea agreement.” We need not consider these arguments, however, because Beale’s claim for post-conviction relief was entirely dependant on his allegation that trial counsel had performed deficiently in connection with the first plea agreement.² See *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (claim of ineffective assistance of counsel requires showing of both deficient performance by counsel and resulting prejudice); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985) (same); see also *State v. Salazar*, 146 Ariz. 540, 541, 707 P.2d 944, 945 (1985) (ineffective assistance of counsel claim fails if petition fails to make sufficient showing of either element of *Strickland* test). As noted above, in denying relief in CR200400391, the trial court found Beale had failed to show deficient performance. In our memorandum decision resolving Beale’s petition for review in that case, and for reasons fully explained therein, we have found no abuse of discretion in that determination. Therefore, although we grant jurisdiction of this petition for review, we deny relief.

GARYE L. VÁSQUEZ, Judge

CONCURRING:

²To the extent Beale attempts to raise a claim unconnected to this contention that he entered into the second plea agreement involuntarily, he did not raise that claim below; therefore, we do not address it here. See *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge

