

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

QUINN WYATT BISHOP,
Petitioner.

No. 2 CA-CR 2014-0115-PR
Filed July 16, 2014

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pima County

No. CR20122958001

The Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Quinn Wyatt Bishop, Kingman
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Quinn Bishop seeks review of the trial court's order 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 clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We grant review but deny relief.

¶2 Bishop pled guilty to leaving the scene after causing an accident that resulted in death or serious physical injury, aggravated assault (a dangerous offense), and driving under the influence of an intoxicant. The trial court sentenced him to an aggravated, seven-year prison term for the assault and suspended the imposition of sentence on the remaining convictions, imposing concurrent, five-year terms of probation to run consecutive to his prison sentence.

¶3 Bishop filed a notice of post-conviction relief and appointed counsel filed a notice stating he had reviewed the record but had found "no legal issues of merit." Bishop then filed a pro se petition for post-conviction relief, claiming that information about the victim's mental health and medical history constituted newly discovered evidence relevant to his sentencing and that trial counsel had been ineffective in failing to present that evidence at sentencing. He further claimed the trial court had the option to designate his aggravated assault charge as non-dangerous and had done so at sentencing but nonetheless imposed a sentence for a dangerous offense, rendering his sentence illegal. Bishop lastly claimed that his Rule 32 counsel's "failure to brief these above mentioned claims . . . establishes cause [and] prejudice excusing any procedural default."

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¶4 In his reply to the state’s response, Bishop further argued his trial counsel had been ineffective in failing to advise him about several “defenses” to the charge of leaving the scene, specifically that he had “returned to the scene” after leaving and that he “suffers from substantial stress.” He claimed he would not have pled guilty to that count had counsel properly advised him.

¶5 The trial court summarily denied relief. It concluded that, before pleading guilty, Bishop had been provided with medical reports concerning the victim’s mental health and, in any event, such information would not have changed the sentence imposed. The court further noted that based on the express terms of the plea agreement, the plea colloquy, the sentencing minute entry, and the “commitment order,” it properly sentenced Bishop for aggravated assault as a dangerous offense. We also note that the presentence report shows the offense as dangerous. The court rejected Bishop’s claims of ineffective assistance of trial counsel because the victim’s medical information would not have altered sentencing and Bishop had not identified any valid defense to the charge of leaving the scene. Finally, the court rejected his claim of ineffective assistance of Rule 32 counsel.

¶6 On review, Bishop briefly repeats his claims that the medical records constitute newly discovered evidence, that trial counsel failed to properly advise him about available defenses, that his sentence was illegal, and that post-conviction counsel had been ineffective. We have reviewed the record and are satisfied that the trial court correctly rejected these claims and that its analysis is thorough and well-reasoned; we therefore adopt the court’s ruling.¹

¹We note it is not entirely clear that Bishop intended to raise in his petition below a claim of ineffective assistance of Rule 32 counsel. He cited *Murray v. Carrier*, 477 U.S. 478, 486 (1986), in which the United States Supreme Court noted that “the mere fact that counsel failed to recognize the factual or legal basis for a claim . . . does not constitute cause for procedural default.” See *Detrich v. Ryan*, 740 F.3d 1237, 1240 (9th Cir. 2013) (en banc) (“[A] state [post-conviction relief] counsel’s ineffective assistance in failing to raise trial-counsel [ineffective assistance] claims can excuse a

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See State v. Whipple, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court has correctly ruled on issues “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing” that analysis).

¶7 Although we grant review, we deny relief.

procedural default.”). Thus, it appears that Bishop was asserting only that his counsel’s failure to raise the claims did not preclude him from doing so. A claim of ineffective assistance of post-conviction counsel is more properly raised in a second proceeding, in which the defendant is entitled to the assistance of counsel. *See Osterkamp v. Browning*, 226 Ariz. 485, ¶¶ 19-20, 250 P.3d 551, 556-57 (App. 2011).