

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DAMIAN DUDLEY,
Petitioner.

No. 2 CA-CR 2014-0217-PR
Filed July 28, 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NOT FOR PUBLICATION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 Maricopa County

No. CR2007128171001DT

The Honorable Arthur T. Anderson, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Susan L. Luder, Deputy County Attorney, Phoenix
Counsel for Respondent

Damian Dudley, Buckeye
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 Brammer¹ concurred.

ECKERSTROM, Chief Judge:

¶1 Damian Dudley 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). For the reasons that follow, we grant review but deny relief.

¶2 Dudley was convicted after a jury trial of robbery, kidnapping, and aggravated assault and sentenced to concurrent prison terms, the longest of which is seventeen years. We affirmed his convictions and sentences on appeal. *State v. Dudley*, No. 1 CA-CR 10-0053 (memorandum decision filed Mar. 6, 2012). Dudley sought post-conviction relief, and counsel filed a notice stating he had reviewed the record but found no “meritorious issue” to raise in post-conviction proceedings. Dudley filed a pro se petition raising various claims of ineffective assistance of his several trial attorneys, including: (1) counsel should have moved to dismiss the indictment “for lack of venue”; (2) after trial but before sentencing, counsel permitted Dudley to engage in a “free talk” with police without counsel being present; (3) counsel did not object to the trial court’s purported “failure to rule” on his “oral motion” asserting that the documents relevant to his prior out-of-state conviction did not establish that he was represented by counsel during those proceedings; (4) counsel did not interview certain witnesses; (5) counsel moved to withdraw before sentencing in violation of his fee

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

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agreement with Dudley; (6) counsel agreed with the state that Dudley would testify in another matter without informing him; and (7) counsel did not request a mitigation specialist or object to the slightly aggravated prison term imposed for kidnapping.

¶3 Dudley also complained that his appellate counsel was ineffective for filing a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), instead of raising various issues. Finally, he claimed his counsel in his Rule 32 proceeding was ineffective for not raising his claims of ineffective assistance of counsel. The trial court summarily denied relief.

¶4 On review, Dudley repeats his claims of ineffective assistance of counsel. But he identifies no error in the trial court's review and summary denial of his claims. We note, however, that the record does not clearly support the court's conclusion that Dudley had raised on appeal a claim "substantially similar" to his claim concerning his prior conviction. We addressed on appeal whether that conviction, which had occurred in another state, "was too old to be used to enhance his sentence." *Dudley*, No. 1 CA-CR 10-0053, ¶ 8. In his petition for post-conviction relief, Dudley instead argued there was insufficient evidence he had been represented by counsel during that proceeding and that trial and appellate counsel had not adequately pursued that argument.

¶5 These claims nonetheless warrant summary rejection. Dudley admitted in open court he had been represented by counsel during his out-of-state proceedings. He does not address this admission; indeed, in his petition for review, he misquotes his counsel's appellate brief in an apparent effort to distort it. As to the remainder of Dudley's claims, we conclude the trial court properly identified and correctly resolved them "in a fashion that will allow any court in the future to understand the resolution." *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). We therefore need not repeat the court's decision, but rather adopt it. *See id.*

¶6 We grant review, but deny relief.