

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LIRA RUFUS PRIDGEN,
Petitioner.

No. 2 CA-CR 2014-0325-PR
Filed December 15, 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NOT FOR PUBLICATION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. CR20124423001

The Honorable Christopher Browning, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Offices of Thomas Jacobs, Tucson

By Thomas Jacobs

Counsel for Petitioner

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MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Lira Pridgen petitions for review of the trial court's denial, in part, of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.¹ We grant review, but we deny relief.

¶2 After Pridgen pleaded guilty to armed robbery, he was convicted and sentenced to a slightly aggravated term of 7.5 years in prison. In a petition for post-conviction relief, he argued his attorney's statement of the factual basis for his plea of guilty, to which he had agreed at his change of plea hearing, "was insufficient to support each element of the crime of Armed Robbery" because it "did not establish that the taking of property was from the victim's person or his immediate presence."²

¹The trial court granted relief on Pridgen's claim that he was entitled to additional pre-sentence incarceration credit.

²A person commits robbery if "in the course of taking any property of another from his person or immediate presence and against his will, such person threatens or uses force against any person with intent either to coerce surrender of property or to prevent resistance to such person taking or retaining property." A.R.S. § 13-1902. A person commits armed robbery "if, in the course of committing robbery," he or she "[i]s armed with a deadly weapon or a simulated deadly weapon" or "[u]ses or threatens to use a deadly weapon or dangerous instrument or a simulated deadly weapon." A.R.S. § 13-1904.

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¶3 In its under-advisement ruling denying relief on this claim, the trial court explained Pridgen’s presentence report provided a “more thorough” factual basis than that set forth by counsel, who had stated only that “Mr. Pridgen deprived [the victim] of his property, and he used a knife while doing so.” See *State v. Brooks*, 120 Ariz. 458, 461, 586 P.2d 1270, 1273 (1978) (court may consider “record as a whole,” including presentence report, to determine whether factual basis supports guilty plea). According to the presentence report, the victim had been sleeping when he woke to find Pridgen standing over him, holding a knife and demanding car keys. Pridgen then left the bedroom, and the victim closed and locked the door behind him. When the victim later opened the door to see if Pridgen was still there, Pridgen told him to get back in the room. The victim called emergency responders, left his room through a bedroom window, and saw Pridgen leaving with a bag later found to contain property from the residence. The court found this factual basis established Pridgen “took property from the victim’s immediate presence” and was “sufficient to show the essential elements of the charge” of armed robbery and to support Pridgen’s guilty plea. This petition for review followed.

¶4 On review, Pridgen argues “the factual basis” for his plea, even as set forth in the trial court’s ruling, still “did not establish that the taking of property was from the victim’s person or his immediate presence” because “any property [he] took was in a different room than the victim” and “[t]here was a door between the parties when any taking took place.” The only case Pridgen cites in support of this claim—*People v. Hayes*, 802 P.2d 376 (Cal. 1990)—instead supports the court’s ruling.

¶5 In *Hayes*, the California Supreme Court reversed a robbery conviction because a trial court had erroneously instructed the jury that “[a]n act of robbery can be said to have occurred in the victim’s immediate presence as long as the victim perceived any overt act connected with the commission of the offense.” *Id.* at 407. But the court also concluded the defendant’s retrial would not violate double jeopardy principles because the robbery conviction had been supported by sufficient evidence, even though the victim had been in another room, more than one hundred feet from where

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property had been taken. *Id.* at 409-10. The court explained, “The generally accepted definition of immediate presence . . . is that ‘[a] thing is in the [immediate] presence of a person, in respect to robbery, which is so within his reach, inspection, observation or control, that he could, if not overcome by violence or prevented by fear, retain his possession of it.’” *Id.* at 406-07 (collecting cases), quoting *Commonwealth v. Homer*, 127 N.E. 517, 533 (Mass. 1920) (alterations in *Hayes*). Thus, “property may be found to be in the victim’s immediate presence ‘even though it is located in another room of the house, or in another building on [the] premises.’” *Id.*, quoting 4 Wharton’s Criminal Law (14th ed. 1981) § 473, p. 52 (alteration added and fns. omitted in *Hayes*).

¶6 In light of this authority, the trial court did not abuse its discretion in summarily denying Pridgen’s claim that his guilty plea had lacked a factual basis. See *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006) (summary denial of post-conviction relief reviewed for abuse of discretion). Accordingly, although review is granted, relief is denied.