

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LUIS GUTIERREZ-VALENCIA,
Petitioner.

No. 2 CA-CR 2014-0449-PR
Filed March 23, 2015

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NOT FOR PUBLICATION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. 31.24.

Petition for Review from the Superior Court in Pinal County

No. S1100CR201101810

The Honorable Dwight P. Callahan, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Renee J. Waters, Deputy County Attorney, Florence
Counsel for Respondent

Luis Gutierrez-Valencia, Florence
In Propria Persona

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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 Luis Gutierrez-Valencia seeks review of the trial court’s order summarily denying 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 abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Gutierrez-Valencia has not met his burden of demonstrating such abuse here.

¶2 Gutierrez-Valencia pled guilty to aggravated assault and was sentenced to a 1.5-year prison term.¹ He sought post-conviction relief, and appointed counsel filed a notice pursuant to Rule 32.4(c) indicating she had discovered no colorable claims to raise on his behalf.

¶3 Gutierrez-Valencia then filed a pro se petition asserting he had been taking a prescribed antidepressant at the time he pled guilty, that the medication “rendered [his] decision making effected [sic],” and that he was “confused at the time [he] accepted th[e] plea and did not understand the pleadings.” He attached to his petition an affidavit in which he avowed he had been taking Amitriptyline at the time he entered his plea and “was confused and experienced strong inappropriate emotions” and suffered from hallucinations. He also attached drug information for Amitriptyline, which listed those symptoms as possible side effects.

¹ The assault occurred while Gutierrez-Valencia was incarcerated, and the sentence is to run consecutively to the prison term he is already serving, which, according to the presentence report, will end in November 2101.

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¶4 In his reply to the state’s response, Gutierrez-Valencia further asserted the trial court had failed to ask him whether he was on prescription medication “that would affect his decision to accept the plea” and trial counsel had been ineffective for failing to investigate his competency at the time of the offense and at the time of his plea. The trial court summarily denied relief. This petition for review followed the court’s denial of his motion for rehearing.²

¶5 On review, Gutierrez-Valencia restates his claims that he was incompetent to enter his plea due to his having taken the medication and that the trial court was required to inquire whether he was taking medications before it accepted his plea. He further asserts that he was entitled to an evidentiary hearing.³ A colorable claim warranting an evidentiary hearing is “one that, if the allegations are true, might have changed the outcome.” *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993).

¶6 We agree with the trial court that, even if we take Gutierrez-Valencia’s assertions as true—that he was taking medication that caused him side effects—he has not presented a colorable claim. A defendant is incompetent to plead guilty if medication or mental illness “has substantially impaired his ability to make a reasoned choice among the alternatives presented to him and understand the nature and consequences of his plea.” *State v.*

²The state asserts this petition for review is untimely. We disagree. It was required to be filed “[w]ithin thirty days after the final decision of the trial court on the petition for post-conviction relief or the motion for rehearing.” Ariz. R. Crim. P. 32.9(c). And a prisoner must place the petition in the prison mail system within that time limit. *State v. Rosario*, 195 Ariz. 264, ¶ 10, 987 P.2d 226, 228 (App. 1999). The order denying Gutierrez-Valencia’s motion for rehearing was filed November 13, 2014, and his petition was received by this court on Monday, December 15. Thus, it clearly was placed in the prison mail system within the thirty-day limit.

³Gutierrez-Valencia apparently has abandoned his claim that his trial counsel was ineffective.

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Brewer, 170 Ariz. 486, 495, 826 P.2d 783, 792 (1992), quoting *State v. Bishop*, 162 Ariz. 103, 105, 781 P.2d 581, 583 (1989).

¶7 Nothing in the transcript of the plea colloquy suggests Gutierrez-Valencia was not in full control of his faculties; there were no objective indications he suffered from confusion, strong emotions, or hallucinations. And he has identified no evidence, such as medical records, suggesting he had the symptoms he allegedly experienced. Nor has he alleged he actually suffered any side effects during the hearing or explained how such side effects impaired his ability to make a reasoned choice or prevented him from understanding the proceedings. See *id.*; see also *State v. Borbon*, 146 Ariz. 392, 399, 706 P.2d 718, 725 (1985) (“Rule 32 does not require the trial court to conduct evidentiary hearings based on mere generalizations and unsubstantiated claims.”).

¶8 A trial court is required to ensure that a guilty plea is knowing, voluntary, and intelligent, Ariz. R. Crim. P. 17.3, and the trial court here made that finding before accepting Gutierrez-Valencia’s guilty plea. We acknowledge that “the better practice is for judges to routinely inquire whether a pleading defendant is on any medication or other substance that might impair the defendant’s ability to enter a plea.” *State v. Rose*, 231 Ariz. 500, ¶ 37, 297 P.3d 906, 915, *cert. denied*, ___ U.S. ___, 134 S. Ct. 696 (2013). However, “absent anything in the record casting doubt on [the defendant]’s competency,” a court’s acceptance of a guilty plea is valid even absent such an inquiry.⁴ *Id.* Gutierrez-Valencia has not identified anything that could have prompted the court to doubt his competency.

⁴Gutierrez-Valencia cites *United States v. Livorsi*, 180 F.3d 76 (2d Cir. 1999), in support of the notion that a trial court must inquire whether he is on medication affecting his competency. That case does not support his argument – there, the court merely noted that the failure “to make a full inquiry into defendant’s mental state” cast doubt on a voluntariness finding in light of significant defects in the plea colloquy. *Id.* at 82. No such defects exist here.

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¶9

Although we accept review, relief is denied.