

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SEAN LEWIS KELLY,
Petitioner.

No. 2 CA-CR 2014-0459-PR
Filed February 17, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2009124801001DT
The Honorable Connie Contes, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Catherine Leisch, Deputy County Attorney, Phoenix
Counsel for Respondent

Janelle A. McEachern, Chandler
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 Sean Kelly petitions for review of the trial court's denial of 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). No such abuse having occurred, we grant review but deny relief.

¶2 After a jury trial, Kelly was convicted of burglary and trafficking in stolen property. He stipulated to having two historical prior felony convictions and having committed the instant offenses while on felony probation, and he was sentenced to enhanced, presumptive, concurrent prison terms totaling 15.75 years. His convictions and sentences were affirmed on appeal. *State v. Kelly*, No. 1 CA-CR 10-0435 (memorandum decision filed Apr. 28, 2011).

¶3 In a pro se petition for post-conviction relief, Kelly claimed his trial counsel had rendered ineffective assistance during plea negotiations by failing to explain and advise him about plea agreements the state had offered in this case and another criminal matter. He maintained he rejected the plea offers based on "the absence of any advice" from trial counsel.

¶4 The trial court denied relief after an evidentiary hearing, stating, "The Court finds to be credible the testimony of trial counsel that he and defendant spoke many times about the plea offers at court, by phone and at the jail, and that [Kelly] had no interest in the plea offers." The court noted counsel's testimony that "he had no doubt in his mind that [Kelly] understood his exposure and was never willing to consider the combined plea offers"

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proposed by the state, and found that testimony was supported by other evidence in the record, including counsel's pretrial representations to the court and Kelly's "sophistication" with respect to his criminal proceedings. This petition for review followed.

¶5 On review, Kelly maintains the trial court "relied on irrelevant factors" in denying relief because "[h]is sophistication with the legal system is not the issue."¹ But the court explained in its order that it had scheduled an evidentiary hearing "to allow [Kelly] the opportunity to prove the factual allegations contained in his sworn Affidavit," and, after the hearing, the court found Kelly had failed to prove those allegations by a preponderance of the evidence. This ruling appears to be warranted based on trial counsel's testimony alone, which the court expressly found "to be credible."

¶6 We defer, as we must, to a trial court's resolution of credibility issues after a Rule 32 evidentiary hearing. *See State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of credibility of witnesses in Rule 32 evidentiary hearing). In its order denying post-conviction relief, the court clearly identified and thoroughly addressed Kelly's claims, and correctly resolved any legal issues in a manner sufficient to permit this or any other court to conduct a meaningful review. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). No purpose would be served by repeating the court's ruling in its entirety, and Kelly has failed to develop any argument that would entitle him to relief on review.

¶7 Accordingly, although we grant review, relief is denied.

¹Kelly does not dispute the trial court's characterization of counsel's testimony at the evidentiary hearing or the court's reliance on other evidence corroborating that testimony. *Cf. State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924 (App. 2003) (we defer to trial court's findings of fact unless unsupported by the record).