

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

VIVIAN MARIE PAXTON,
Petitioner.

No. 2 CA-CR 2015-0389-PR
Filed November 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NOT FOR PUBLICATION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 Mohave County
No. CR201000689
The Honorable Lee F. Jantzen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

The Brewer Law Office, Show Low
By Benjamin M. Brewer
Counsel for Petitioner

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MEMORANDUM DECISION

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

M I L L E R, Presiding Judge:

¶1 Vivian Paxton seeks review of the trial court’s order denying her petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Paxton has not met her burden of demonstrating such abuse here.

¶2 After a jury trial, Paxton was convicted of possession of a dangerous drug for sale and drug paraphernalia. She was sentenced to concurrent prison terms of ten years for possession of a dangerous drug and one year for possession of drug paraphernalia. We affirmed Paxton’s convictions and her sentence for possession of a dangerous drug as modified; we remanded for resentencing on her conviction for possession of drug paraphernalia. *State v. Paxton*, No. 1 CA-CR 11-0376 (memorandum decision filed Oct. 30, 2012). The court subsequently sentenced her to a concurrent, one-year term for paraphernalia possession.

¶3 Paxton sought post-conviction relief, arguing her trial counsel had been ineffective in failing to file a motion to suppress statements she made to police officers after she invoked her right to counsel and evidence “based on an illegal stop” and the subsequent “illegal detention.” She also asserted counsel had failed to effectively cross-examine officers regarding the search of her person before she was placed in the back seat of a police vehicle, where drugs were later located. Without a response from the state, the trial court summarily denied relief, stating that Paxton had not made a colorable claim that “would have resulted in the suppression of [her]

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statements” or “could have resulted in a different outcome at trial.” This petition for review followed.

¶4 On review, Paxton’s chief argument is that the trial court failed to address all of the bases for her claim of ineffective assistance of counsel and failed to make “specific findings of fact and conclusions of law as it pertained to each issue raised.” Although the court’s ruling was brief, that does not require us to conclude it failed to address all of Paxton’s arguments. Admittedly, the court’s first comment pertained only to her claim regarding her statement to police, but its second comment—that Paxton had not demonstrated there would have been a different result—arguably encompassed all of Paxton’s claims.

¶5 Paxton cites Rule 32.8 in support of her argument, but that rule does not apply if, as here, the trial court summarily dismisses the proceeding pursuant to Rule 32.6(c).¹ That rule requires a court to summarily dismiss claims when a defendant has not “present[ed] a material issue of fact or law which would entitle the defendant to relief.” In contrast, Rule 32.8 requires the court to conduct an evidentiary hearing “to determine issues of material fact” and then issue a decision including “specific findings of fact” and “conclusions of law.” But Rule 32.8 is implicated only if resolving the defendant’s claim requires the court “to determine issues of material fact.” Here, the court did not do so—it instead expressly stated in its ruling that it was “[c]onsidering [the] evidence in a light most favorable to [Paxton]” and summarily dismissed her claims.

¹Paxton cites various civil cases in support of her argument, but that authority has no application to this criminal proceeding. We agree with the general notion that a detailed ruling by the trial court is beneficial to this court in conducting any review of that ruling. See *Brown v. Superior Court*, 137 Ariz. 327, 331 n.5, 670 P.2d 725, 729 n.5 (1983) (“We encourage trial judges to assist reviewing courts by stating on the record the specific reasons for their actions.”). But lack of detail does not warrant relief.

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¶6 Underlying Paxton’s argument that the trial court’s ruling lacked sufficient detail is her contention that her claims of ineffective assistance of counsel were colorable. A claim is colorable, thereby entitling the defendant to an evidentiary hearing, only if the “allegations, if true, would have changed the verdict.” *State v. Krum*, 183 Ariz. 288, 292, 903 P.2d 596, 600 (1995). To present a colorable claim of ineffective assistance of counsel, Paxton was required to show both that counsel’s performance was deficient under prevailing professional norms and that the deficient performance prejudiced her. *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (“The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.”).

¶7 Paxton, however, does not develop any argument that her claims were colorable. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review). She instead invites us to “review [her] original petition for post conviction relief as it pertains to the issues that were presented and the prejudice demonstrated as that analysis is contained therein.” A petitioner is not permitted to incorporate arguments by reference. *See State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991); *see also Ariz. R. Crim. P. 32.9(c)(1)* (petition for review must contain “reasons why the petition should be granted” and “specific references to the record,” but shall not “incorporate any document by reference, except the appendices”). The result would not be different if we incorporated arguments made to the trial court because Paxton has identified no authority or evidence suggesting trial counsel fell below prevailing professional norms by declining to raise these issues, let alone that trial counsel’s conduct prejudiced her. *See Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d at 68.

¶8 Although we grant review, we deny relief.