IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

HENRY JONAH SATTERWHITE,
Petitioner.

No. 2 CA-CR 2015-0396-PR
Filed April 5, 2016

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NOT FOR PUBLICATION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. S1100CR201202228
The Honorable Joseph R. Georgini, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Adena J. Astrowsky, Deputy County Attorney, Florence
Counsel for Respondent

Henry J. Satterwhite, Florence
In Propria Persona

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Henry Satterwhite seeks review of the trial court's ruling summarily dismissing his 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). Satterwhite has not met his burden of demonstrating such abuse here.

¶2 Pursuant to a plea agreement, Satterwhite pled no contest to kidnapping; the plea agreement stipulated that Satterwhite would serve an aggravated eleven-year prison term. The trial court sentenced him consistent with that agreement. Satterwhite filed a notice of post-conviction relief,[1] and appointed counsel filed a notice stating she had reviewed the record but had found no claims to raise in a Rule 32 proceeding.

¶3 Satterwhite filed a pro se petition arguing his trial counsel had been ineffective for failing to investigate a possible

[1]Satterwhite's notice was facially untimely. Ariz. R. Crim. P. 32.4(a). Satterwhite's sentence of imprisonment was entered on September 4, 2013. Although he signed his notice on November 15, it was not filed until December 16, 2013. The notice did not include anything indicating when Satterwhite had given it to prison authorities for mailing. *See State v. Rosario*, 195 Ariz. 264, ¶ 10, 987 P.2d 226, 228 (App. 1999) (notice of post-conviction relief deemed filed when prisoner gives notice to prison officials for mailing). The trial court, however, stated the notice had been timely filed. Because Satterwhite is not entitled to relief in any event, we need not decide whether the record supports the court's conclusion.

defense based on Satterwhite's mental illness and for waiving his right to a presentence report that would have included information about his mental illness as a mitigating factor. The trial court summarily denied relief, and this petition for review followed.

¶4 On review, Satterwhite argues the trial court erred in summarily rejecting his claims without a hearing and that counsel was "ineffective" for recommending that he accept the plea offer without further investigating his mental health and possible defenses. He additionally argues that fundamental error occurred when the court accepted his plea of guilty and sentenced him "without a pre-sentence report or a Rule 11[, Ariz. R. Crim. P.,] evaluation."

¶5 A defendant is entitled to an evidentiary hearing only if he or she presents a colorable claim. *State v. D'Ambrosio*, 156 Ariz. 71, 73, 750 P.2d 14, 16 (1988). "To state a colorable claim of ineffective assistance of counsel," Satterwhite was required to show "both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced [him]." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶6 But, by pleading no contest, Satterwhite has waived all nonjurisdictional defects unrelated to the validity of his plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993). He has not asserted that he would have rejected the state's plea offer had counsel investigated his mental illness. And, although he suggests he was not competent to enter a no-contest plea and counsel should have pursued a mental-health evaluation pursuant to Rule 11, he did not raise that claim in his petition below, instead raising it for the first time in his reply. Thus, the trial court was not required to consider that argument, and neither are we. *See State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7, 221 P.3d 1052, 1054 (App. 2009).

¶7 Nor has Satterwhite established that counsel fell below prevailing professional norms by waiving the presentence report. As we noted above, the plea agreement called for a stipulated sentence. If the trial court believed that sentence to be

inappropriate, it would not have imposed a lesser sentence but instead would have been required to allow the state to withdraw from the plea. *See generally State v. Szpyrka*, 223 Ariz. 390, ¶ 5, 224 P.3d 206, 208 (App. 2010) ("[W]here a plea agreement is materially altered by the nullification of one of its provisions, frustrating the agreement's purpose, rescission of that agreement may be warranted."). And, because Satterwhite did not raise the argument in the trial court, we do not address his final argument that fundamental error occurred because his plea was accepted and he was sentenced without a mental-health evaluation or presentence report. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court need not address claims not raised below).

¶8 We grant review but deny relief.