

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

GUILLERMO RAMOS-PEREZ,
Petitioner.

No. 2 CA-CR 2015-0412-PR
Filed February 3, 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NOT FOR PUBLICATION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. S1100CR201400986
The Honorable Kevin D. White, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

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

Guillermo Ramos-Perez, San Luis
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Chief Judge:

¶1 Guillermo Ramos-Perez seeks review of the trial court’s order summarily dismissing his of-right 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). Ramos-Perez has not met his burden of demonstrating such abuse here.

¶2 Ramos-Perez pled guilty to possession of marijuana for sale and was sentenced to a 6.5-year prison term. Ramos-Perez sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise in Rule 32 proceedings. Ramos-Perez filed a pro se petition claiming his counsel had been ineffective for, as we understand his arguments: (1) not recommending that he reject the plea offer or in failing to argue Ramos-Perez should be permitted to withdraw from the plea because the state failed to demonstrate he intentionally possessed the marijuana for sale; (2) failing to mount a legal challenge based on the discrepancy between the amount of marijuana he claimed was alleged in the indictment—155 pounds—and the amount listed in his plea agreement—between two and four pounds; and (3) failing to interview his codefendant, which would have “shown that they were not codefendants and how much weight of marijuana he was in possession of.” The court summarily denied the petition, and this petition for review followed.

¶3 On review, Ramos-Perez asserts he was entitled to an evidentiary hearing on his claims and asserts counsel was ineffective for “[f]ailing to withdraw the plea, failing to file a motion to suppress and failing to interview the alleged co-defendant.” A

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defendant is entitled to an evidentiary hearing in a Rule 32 proceeding only if he or she presents a colorable claim, that is, a claim where 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, Ramos-Perez was required to show both that counsel’s performance was deficient under prevailing professional norms and that the deficient performance prejudiced him. *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (“The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.”). And, by pleading guilty, Ramos-Perez has waived all nonjurisdictional defects, including claims of ineffective assistance of counsel, other than those related to the validity of his guilty plea. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993).

¶4 We agree with the trial court that Ramos-Perez’s claims warrant summary dismissal. He has not supported his assertion that his codefendant would have stated they were not accomplices or otherwise identified any exculpatory information his codefendant would have provided if interviewed. He suggests his codefendant would have clarified the amount of marijuana each individual was carrying but does not contend he was carrying less than his codefendant or less than the two pounds he admitted carrying as part of his guilty plea.¹ Nor has he asserted that he would not have pled guilty as a result of information obtained in an interview.

¶5 And, although Ramos-Perez suggests, as he did below, that counsel should have sought suppression of evidence, he did not identify in his petition for post-conviction relief any legal basis for suppression. He asserts in his petition for review that suppression is warranted because law enforcement officers lacked probable cause to detain him. We do not address arguments not raised in the trial

¹For the same reason, we reject Ramos-Perez’s apparent claim that counsel should have made an argument based on the state’s purported failure to disclose the amount of marijuana he actually had been carrying.

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court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980). And Ramos-Perez has provided no legal or factual basis upon which he would have been permitted to withdraw from the plea. *See generally* Ariz. R. Crim. P. 17.5 (withdrawal of plea only permitted “when necessary to correct a manifest injustice”).

¶6 We grant review but deny relief.