

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DONALD RAY SCHULTZ,
Petitioner.

No. 2 CA-CR 2015-0438-PR
Filed March 1, 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NOT FOR PUBLICATION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 Cochise County
No. S0200CR201200677
The Honorable Wallace R. Hoggatt, Judge

REVIEW DENIED

COUNSEL

Janelle A. McEachern, Chandler
Counsel for Petitioner

STATE v. SCHULTZ
Decision of the Court

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 Donald Schultz seeks review of the trial court’s order denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We deny review.

¶2 After a jury trial, Schultz was convicted of third-degree burglary, criminal damage, and possession of burglary tools. The trial court sentenced him to concurrent prison terms, the longest of which was ten years. We affirmed his convictions and sentences on appeal. *State v. Schultz*, No. 2 CA-CR 2013-0521 (memorandum decision filed July 11, 2014).

¶3 Schultz sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found “no colorable claims” to raise in post-conviction proceedings. Schultz filed a pro se petition, arguing his first counsel had been ineffective in failing to adequately advise him of the terms of a plea offer from the state and his second counsel had been ineffective in failing to recognize that no hearing had been held pursuant to *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000), concerning that plea. However, the trial court allowed Schultz to withdraw that petition and file an amended petition.

¶4 In that amended petition, Schultz abandoned his previous claims and instead asserted trial counsel had been ineffective in failing to inform him of an earlier plea offer providing for a concurrent term of probation. The court determined the claim was colorable and held an evidentiary hearing. After that hearing, the court denied relief, finding that Schultz had not shown prejudice because, even assuming the plea had been offered and trial counsel

STATE v. SCHULTZ
Decision of the Court

had failed to inform Schultz, the state withdrew the offer and would have done so even had Schultz accepted it. This petition for review followed.

¶5 On review, Schultz asserts his trial counsel “failed to advise him of the ramifications of rejecting a plea agreement.” As we noted above, Schultz raised this claim in his first petition, but not in his amended petition. And, although the court observed the claim was not colorable, it also concluded Schultz had abandoned it. This issue is therefore not before us. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court does not consider issues neither presented to nor decided by trial court); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court . . . which the defendant wishes to present . . . for review”).

¶6 Because Schultz presents no claim subject to our review, we deny review.