

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TERRANCE LEANDRE ROBINSON,
Petitioner.

No. 2 CA-CR 2016-0032-PR
Filed March 16, 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NOT FOR PUBLICATION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 Maricopa County
No. CR2009147740003DT
The Honorable Karen L. O'Connor, Judge

REVIEW GRANTED; RELIEF DENIED

Terrance L. Robinson, San Luis
In Propria Persona

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MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Petitioner Terrance Robinson 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 will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Robinson has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Robinson was convicted of second-degree murder and attempted aggravated assault. The trial court imposed consecutive terms of imprisonment totaling twenty-five years. Robinson thereafter sought post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and was “unable to discern any colorable claim upon which to base a Petition for Post-Conviction Relief.” In a pro se supplemental petition, however, Robinson argued that the trial court erred in imposing an enhanced sentence, that the court had not “conduct[ed] a proper hearing on the waiver of the right to counsel” or properly determined he had waived his right to counsel, and that he had received ineffective assistance of counsel. The trial court summarily dismissed the petition.

¶3 On review, Robinson repeats his claims and requests “vacation of judgment and dismissal of charges with prejudice.” We first reject Robinson’s claim that the trial court violated his rights by denying his third request for new counsel, made on the day of trial. Robinson requested new counsel “[o]n or around” his trial date in 2009. New counsel was appointed and “on or around the final trial management conference,” Robinson again sought new counsel,

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ultimately being assigned a new attorney. It was this attorney whom Robinson sought to remove on the date of trial. In support of his motion he contended he did not believe counsel was “competent enough or . . . diligent enough” to represent him and stated he was “uncomfortable with” the trial strategy counsel had adopted.

¶4 “A criminal defendant has a Sixth Amendment right to representation by competent counsel.” *State v. Cromwell*, 211 Ariz. 181, ¶ 28, 119 P.3d 448, 453 (2005). “A defendant is not, however, entitled to counsel of choice or to a meaningful relationship with his or her attorney.” *Id.* Likewise, “disagreements over defense strategies do not constitute an irreconcilable conflict” requiring substitution of counsel. *Id.* ¶ 29. On the record before us, Robinson’s allegations did not rise to the level of an irreconcilable conflict requiring substitution of counsel, and the trial court did not err in denying his request for new counsel.

¶5 Having concluded the trial court properly denied Robinson’s request for new counsel, we also reject his claim that his waiver of counsel was involuntary. The trial court determined Robinson did not suffer from mental health issues that would render him incompetent, determined Robinson was not taking medications, examined Robinson about his legal knowledge, explained the charges against Robinson and the possible sentences, and assigned counsel to continue in an advisory role. Under these circumstances, we cannot say the trial court erred in concluding Robinson voluntarily waived his right to counsel. *See State v. Wassenaar*, 215 Ariz. 565, ¶ 21, 161 P.3d 608, 615 (App. 2007) (waiver of counsel must be voluntary, knowing, and intelligent, which depends on circumstances of case).

¶6 Robinson also contends that he received ineffective assistance of counsel from appointed counsel before his waiver of his right to counsel. “To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant.” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show prejudice, a defendant must show that

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there is a “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Strickland*, 466 U.S. at 694. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.* In the context of a defendant who has pled guilty, a defendant must demonstrate he would not have waived his right to a jury trial absent counsel’s deficient performance and must provide an “allegation of specific facts which would allow a court to meaningfully assess why that deficiency was material to [his] decision” to waive his rights. *State v. Bowers*, 192 Ariz. 419, ¶ 25, 966 P.2d 1023, 1029 (App. 1998). Robinson has provided no such allegation or explained how counsels’ purported “languid character” or failures to take various pretrial actions would have altered the outcome of his case or his decision to plead guilty. *See State v. Quick*, 177 Ariz. 314, 316, 868 P.2d 327, 329 (App. 1993) (by entering guilty plea defendant waives all nonjurisdictional defects, including claim of ineffective assistance of counsel, except those relating to validity of plea). The trial court therefore properly rejected his claims of ineffective assistance of counsel.

¶7 Finally, we reject Robinson’s claim that the trial court abused its discretion in dismissing his claim that he was improperly sentenced. He contends he “never waived his right to have a jury determine any aggravating factors.” But Robinson’s plea agreement stipulated to an aggravated term of three years’ imprisonment on the attempted aggravated assault count, the maximum term of twenty-two years’ imprisonment on the second-degree murder count, and that the terms would be served consecutively. The agreement further provided Robinson was “giving up [his] right . . . to a trial by jury to determine . . . any fact used to impose a sentence within the range stated above.” His sentencing claim is thus directly refuted by the record.

¶8 For the reasons above, although we grant the petition for review, we deny relief.