NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

JOSE DENIZ-RODRIGUEZ, *Petitioner*.

No. 1 CA-CR 13-0512 PRPC
FILED 2-12-2015

Petition for Review from the Superior Court in Coconino County
No. 1 CA-CR 2012-00164
The Honorable Mark R. Moran, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Coconino County Attorney's Office, Flagstaff
By Stacy Krueger
Counsel for Respondent

Jose Deniz-Rodriguez, Tucson
Petitioner

MEMORANDUM DECISION

Presiding Judge Margaret H. Downie, Judge Patricia K. Norris, and Judge Randall M. Howe delivered the decision of the Court.

PER CURIAM:

¶1 Jose Deniz-Rodriguez petitions for review of the trial court's summary dismissal of his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We have considered his petition and, for the reasons stated, grant review but deny relief.

BACKGROUND

¶2 Deniz-Rodriguez was indicted on one count of first degree burglary, two counts of aggravated assault, two counts of criminal damage, and one count of threatening or intimidating. Deniz-Rodriguez pled guilty to one count of aggravated assault, a class 3 felony and dangerous offense, in exchange for dismissal of the other charges. Pursuant to the plea agreement, the trial court sentenced Deniz-Rodriguez to an aggravated twelve-year term of imprisonment with credit for 534 days of presentence incarceration.

¶3 Deniz-Rodriguez filed a timely notice of post-conviction relief, and appointed counsel filed a notice stating she had investigated the case but had found no claims to raise. Deniz-Rodriguez thereafter filed a *pro se* petition for post-conviction relief in which he argued that his guilty plea should be set aside for lack of a factual basis. The trial court summarily dismissed the petition based on a finding that an adequate factual basis had been provided at the change of plea hearing.

DISCUSSION

¶4 Deniz-Rodriguez contends the trial court erred in denying relief because the factual basis for his guilty plea was inadequate in that he never admitted to the specific elements of the offense. We review the summary dismissal of a petition for post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, 566 ¶ 17, 146 P.3d 63, 67 (2006).

¶5 Contrary to Deniz-Rodriguez's contention, there is no requirement that a defendant expressly admit to the elements of the offense. Rather, a guilty plea may be properly accepted even though the defendant does not admit to having committed the offense, "as long as the trial court is careful to ascertain that there is a factual basis for the plea." *State v. Dixon*, 111 Ariz. 92, 94, 523 P.2d 789, 791 (1974). Here, defense counsel, without objection, stated the factual basis for the guilty plea at the change of plea hearing as follows: "Mr. Deniz-Rodriguez recklessly discharged a shotgun, which struck and severely injured [the victim]." Defense counsel's statement encompasses all the elements for the offense of reckless

aggravated assault to which Deniz-Rodriguez pled guilty. *See* Ariz. Rev. Stat. §§ 13-1203(A)(1), -1204(A)(2). The factual basis provided by defense counsel was further supported by the presentence report, which was filed without objection and detailed the circumstances under which Deniz-Rodriguez recklessly shot the victim. *See State v. Sodders*, 130 Ariz. 23, 25, 633 P.2d 432, 434 (App. 1981) (holding court may consider the extended record, including presentence report, in determining whether sufficient factual basis exists for guilty plea). Accordingly, the trial court did not abuse its discretion in ruling that Deniz-Rodriguez failed to state a colorable claim for relief.

CONCLUSION

¶6 For the foregoing reasons, we grant review but deny relief.



Ruth A. Willingham · Clerk of the Court
FILED: ama