

SUPREME COURT OF ARIZONA

STATE OF ARIZONA,) Arizona Supreme Court
) No. CR-17-0041-PR
 Respondent,)
) Court of Appeals
 v.) Division Two
) No. 2 CA-CR 16-0233
 ALBERTO MARTINEZ,)
) Pima County
 Petitioner.) Superior Court
) Nos. CR20131346-001
) CR20132045-001
) CR20133818-001
) **FILED 9/18/2017**

DECISION ORDER

**GRANTING REVIEW, VACATING THE DECISION OF THE COURT OF APPEALS,
REVERSING THE SUPERIOR COURT'S DENIAL OF POST-CONVICTION RELIEF,
AND REMANDING FOR A RULE 32 EVIDENTIARY HEARING**

In Spring 2014, Petitioner Alberto Martinez was diagnosed with a mental illness in remission, but ultimately found competent for trial. In September 2014, the trial court accepted Martinez's guilty plea and he was convicted of theft of a means of transportation, kidnapping, and aggravated assault on a corrections employee. A month later, the court sentenced Martinez to consecutive, maximum and presumptive prison terms totaling 15.5 years.

Martinez filed a petition for post-conviction relief under Arizona Rule of Criminal Procedure 32. Citing Rule 32.1(a), Martinez asserted that his due process rights had been violated because he was not competent for his plea and sentencing. Additionally, he raised a related claim of ineffective assistance of counsel ("IAC") for failing to reinvestigate his competence and to request another competency determination before the plea and sentencing.

With his PCR petition Martinez presented evidence from a doctor who had reviewed medical and jail records and interviewed

Martinez ten days after sentencing. The doctor opined that Martinez was not competent at the time of the interview, and that it was more likely than not Martinez was incompetent at the time of his plea and later sentencing.

The superior court denied Rule 32 relief without holding an evidentiary hearing. It determined that the court did not have a duty to inquire into Martinez's competence or hold another competency hearing before the plea and sentencing, and that counsel was effective because the court had adequately considered Martinez's mental health at the plea and sentencing.

Similarly, the court of appeals on review denied relief, concluding that the trial court was not required to inquire about Martinez's competence or to hold another competency hearing before the plea and sentencing. *State v. Martinez*, 2 CA-CR 16-0233-PR, 2016 WL 7385001, *1 ¶ 2 (Ariz. App. Dec. 21, 2016) (mem. dec.). Relying on *State v. Krum*, 183 Ariz. 288, 292 (1995), the court of appeals concluded that Martinez had not stated a colorable claim for purposes of obtaining an evidentiary hearing under Rule 32. Consequently, the court also determined that Martinez could not prove deficient performance or prejudice for purposes of his IAC claim. See *Strickland v. Washington*, 466 U.S. 668 (1984).

Martinez filed a petition for review in this Court. Upon consideration, we grant review and relief. Criminal defendants are constitutionally entitled to be competent at the time of trial, change of plea, and sentencing. *Pate v. Robinson*, 383 U.S. 375, 378 (1966) ("the conviction of an accused person while he is legally incompetent violates due process"); see Ariz. R. Crim. P. 11.1. Whether the trial court and counsel appropriately

fulfilled their respective duties does not address Martinez's core due process claim – that he was not competent at the time of his guilty plea or sentencing.

As the State appropriately conceded in the court of appeals and on review here, the evidence Martinez presented creates a material issue of fact about his competency to stand trial that requires an evidentiary hearing. See Ariz. R. Crim. P. 32.6(c) (requiring hearing for "claims that present a material issue of fact"). Specifically, Rule 32.8(a) states that a defendant is "entitled to a hearing to determine issues of material fact," and Rule 32.6(c) permits the court to dismiss petitions without a hearing only if "no remaining claim presents a material issue of fact . . . which would entitle the defendant to relief" *Cf. State v. Amaral*, 239 Ariz. 217, 220 ¶ 11 (2016) (obtaining a hearing under Rule 32.1(e) requires alleging facts that "if true, would probably have changed the verdict or sentence").

If Martinez proves that he was not competent at the time of his plea or sentencing, he would be entitled to relief under Rule 32. See Ariz. R. Crim. P. 32.1(a) (conviction or sentence violates constitution); *cf.* Ariz. R. Crim. P. 32.1(e) (newly discovered evidence "probably would have changed the verdict or sentence"). Thus, the superior court erred by summarily denying Martinez's petition for post-conviction relief without holding an evidentiary hearing. Accordingly,

IT IS ORDERED granting review and vacating the decision of the court of appeals.

IT IS FURTHER ORDERED reversing the superior court's summary denial of Martinez's Rule 32 petition.

IT IS FURTHER ORDERED remanding the matter to the superior court for an evidentiary hearing pursuant to Rule 32.

DATED this 18th day of September, 2017.

_____/s/_____
SCOTT BALES
Chief Justice

TO:

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