

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 11 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0077-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RONNIE GENE SARTIN JR.,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR061619

Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

Law Office of Stephanie J. Meade
By Stephanie J. Meade

Tucson
Attorney for Petitioner

K E L L Y, Judge.

¶1 After his first conviction for first-degree murder was set aside following post-conviction proceedings, petitioner Ronnie Sartin again was convicted of first-degree murder after a jury trial. The trial court sentenced him to a prison term of natural life and he appealed. He also sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the court denied. Sartin's petition for review to this court was consolidated with

the appeal. We affirmed and denied relief. *State v. Sartin*, Nos. 2 CA-CR 2008-0025, 2 CA-CR 2008-0235-PR (consolidated) (memorandum decision filed Oct. 16, 2009). Sartin again sought post-conviction relief in 2010. The court denied relief after an evidentiary hearing, and this petition for review followed. It was for the trial court to determine, in the exercise of its discretion, whether post-conviction relief was warranted and, unless it abused this discretion, we will not disturb its ruling on review. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006).

¶2 Sartin's murder conviction arose from the stabbing death of M.T. in May 1998, fourteen months after Sartin himself had suffered life threatening injuries after being shot by Jesus Fierros. In the trial that followed, in which Fierros was convicted for shooting Sartin, the state maintained that Sartin had been the victim and not the aggressor. In his petition for post-conviction relief, Sartin argued the prosecutor had been guilty of misconduct by violating the trial court's order precluding the state from taking a different position in his case from the one it had taken in Fierros's case. Sartin contended that in his trial the prosecutor elicited testimony that Sartin had pulled a knife during his encounter with Fierros. But the same witness had testified differently at Fierros's trial—allegedly suggesting that Sartin, not Fierros, had been the aggressor. Sartin also claimed trial counsel Brick Storts and his co-counsel Ian Tomlinson had been ineffective in failing to object or request a mistrial when the prosecutor elicited this testimony and referred to it in closing argument; in failing to object to the admission of that evidence on the ground that it was improper character evidence under Rule 404(b), Ariz. R. Evid.; in failing to impeach the witness with his prior testimony from the *Fierros* case; and in failing to request a limiting instruction related to the statements elicited by the prosecutor. Sartin additionally claimed Storts had been ineffective as appellate

counsel as well because, although he had raised prosecutorial misconduct as an issue on appeal, he had not raised this particular claim and had not argued the trial court had erred by failing sua sponte to give the jury a limiting instruction.

¶3 Finding that questions of fact existed, the trial court granted Sartin’s request for an evidentiary hearing. Storts, Tomlinson and Sartin testified. After taking the matter under advisement, the court issued a thorough, detailed minute entry in which it reviewed the case history, correctly identified the claims Sartin had raised, articulated the proper standards for reviewing the claims, and resolved the issues correctly after considering the record and the testimony at the evidentiary hearing. Although we adopt the court’s ruling and no purpose would be served by restating the court’s decision in its entirety here, *see State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993), we briefly summarize the gravamen of the court’s ruling as it relates to Sartin’s petition for review.

¶4 The trial court correctly found the independent claim of prosecutorial misconduct was precluded because it could have been raised on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3). Indeed, as noted above, Storts had raised such a claim on appeal. But in the context of Sartin’s claims of ineffective assistance of trial and appellate counsel, the court did address the merits of all of these claims, and concluded Sartin had not sustained his burden of establishing he was entitled to relief.

¶5 In his petition for review, Sartin contends the trial court abused its discretion in finding the prosecutor had not committed misconduct and in finding counsel had not been ineffective at trial or on appeal, despite the fact that counsel had not taken “any action with respect to the Prosecutor’s misconduct.” Reasserting the claims he raised below, Sartin relies on the testimony at the evidentiary hearing and insists he sustained his burden of establishing he was entitled to relief.

¶6 A defendant is required to prove the factual allegations in the petition for post-conviction relief by a preponderance of the evidence. *See* Ariz. R. Crim. P. 32.8(c). As we review the trial court’s ruling, we are mindful that it is for the trial court to evaluate the witnesses’ credibility, resolve any conflicts in the evidence, and weigh the evidence. *See State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988); *see also State v. Rodriguez*, 205 Ariz. 392, ¶ 18, 71 P.3d 919, 924-25 (App. 2003) (appellate court does not reweigh evidence); *State v. Ossana*, 199 Ariz. 459, ¶ 7, 18 P.3d 1258, 1260 (App. 2001) (appellate court does not determine credibility of witnesses). That is because the trial court “‘is in the best position to evaluate credibility and accuracy, as well as draw inferences, weigh, and balance’” the evidence that was presented at the evidentiary hearing. *See State v. Hoskins*, 199 Ariz. 127, ¶ 97, 14 P.3d 997, 1019 (2000), *quoting State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). We will not disturb the court’s factual findings unless they are “clearly erroneous.” *State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994).

¶7 The evidence before the trial court included Storts’s testimony about tactical decisions he had made during trial and his view of the favorable evidence that had been presented through the state’s witness. Specifically, Storts believed the witness had established precisely what the defense had wanted—that Sartin had put down the knife, and was shot as he was retreating. Storts’s conclusion that, overall, there was no significant distinction in the evidence presented in the Fierros trial and the evidence presented in Sartin’s trial, was further supported by Sartin’s testimony at the evidentiary hearing that he did, in fact, have a knife on the day he had been shot, and that he had testified to that fact at Fierros’s trial. Storts stated he saw no purpose in impeaching the witness, notwithstanding discrepancies between the witness’s testimony in the Fierros

trial and his testimony in Sartin’s trial. As the court correctly found, quoting *Strickland v. Washington*, 466 U.S. 668, 689 (1984), a court’s review of counsel’s tactical decisions must be “highly deferential,” and there is a presumption that the decisions counsel made were tactical and strategic. Disagreements about trial strategy do not establish that counsel had been ineffective if “the challenged conduct has some reasoned basis,” *State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985), even if the strategy counsel chose was unsuccessful, *see State v. Farni*, 112 Ariz. 132, 133, 539 P.2d 889, 890 (1975).

¶8 Based on the record before us, we conclude Sartin has not sustained his burden of establishing the trial court abused its discretion by denying relief. We therefore grant his petition for review but deny relief.

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge