

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

SCOTT MICHAEL MEDIZ,
Petitioner.

No. 2 CA-CR 2016-0012-PR
Filed May 9, 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NOT FOR PUBLICATION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 Pima County
No. CR20104113002
The Honorable Sean E. Brearcliffe, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Barton & Storts, P.C., Tucson
By Brick P. Storts, III
Counsel for Petitioner

STATE v. MEDIZ
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Presiding Judge:

¶1 Scott Mediz seeks review of the trial court’s ruling denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Mediz has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Mediz was convicted of kidnapping and first-degree murder. The jury verdict for first-degree murder was unanimous for felony murder and premeditated murder. The trial court sentenced him to concurrent prison terms, the longer of which is natural life. We affirmed his convictions and sentences on appeal, but vacated the imposed criminal restitution order. *State v. Mediz*, No. 2 CA-CR 2012-0455 (memorandum decision filed Oct. 22, 2014). Among the issues Mediz raised on appeal was the denial of a motion to vacate the judgment based on purported newly discovered evidence that three witnesses had planned to coordinate their testimony. *Id.* ¶ 17. We concluded the evidence was not newly discovered because trial counsel had been aware of it before trial. *Id.* ¶ 19.

¶3 Mediz then sought post-conviction relief arguing his trial counsel had been ineffective in failing to seek to depose the inmate who initially reported the alleged collusion. Mediz also asserted he was entitled to an evidentiary hearing. The trial court summarily denied relief. It concluded that trial counsel’s “decision not to pursue an interview with [the inmate]” had been a rational tactical decision and, in any event, that Mediz had not shown resulting prejudice. The court noted that the witnesses who

STATE v. MEDIZ
Decision of the Court

allegedly had colluded provided different testimony and concluded that “[a]ttacking a witness’s credibility on the basis that he colluded to align his testimony with another witness on a material point at which their testimony was *not* aligned, is unlikely to have made a dime’s worth of difference.” This petition for review followed.

¶4 On review, Mediz asserts he is entitled to a new trial because his trial counsel was ineffective.¹ He argues evidence contradicts the trial court’s conclusion that counsel’s decision was tactical. He further argues that discrediting the witnesses was “crucial to [his] defense.” To prevail on his claim of ineffective assistance of counsel, Mediz was required to demonstrate not only that counsel’s conduct fell below prevailing professional norms, but that the outcome of the case would have been different but for the deficient performance. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985).

¶5 Even if we agreed with Mediz that competent counsel would have sought to depose the inmate, he has not shown resulting prejudice. He does not disagree with the trial court that the witnesses gave inconsistent accounts. Whatever value the collusion testimony might have had is considerably diluted by those inconsistencies, in part because it significantly undermines the notion there was any collusion at all. And, as we noted in our decision on appeal, the evidence against Mediz was overwhelming. *Mediz*, No. 2 CA-CR 2012-0455, ¶ 11. Further, Mediz did not explain in his petition below how the evidence related to the jury’s unanimous finding of felony murder—he instead focused his claim on premeditated murder.²

¹Despite requesting an evidentiary hearing below, Mediz now asserts no hearing is necessary for him to obtain relief because the relevant facts were adequately presented in the hearing on his previous motion to vacate.

²Mediz argues for the first time in his petition for review that the collusion evidence would have aided his defense theory that he did not kidnap the victim but instead intended to take him to the

STATE v. MEDIZ
Decision of the Court

¶6 We grant review but deny relief.

hospital. We do not address arguments not raised below. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court will not consider on review claims not raised below); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must contain “issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review”).