

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

APR -4 2011

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2011-0001-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DANNY LOUIS MUSGROVE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20061370

Honorable Howard Fell, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

The Hopkins Law Office, P.C.
By Cedric Martin Hopkins

Tucson
Attorney for Petitioner

ECKERSTROM, Judge.

¶1 Following a jury trial, petitioner Danny Musgrove was convicted of one count each of first-degree murder and conspiracy to commit first-degree murder, and two counts of endangerment. The trial court imposed concurrent terms of life imprisonment

for the murder and conspiracy convictions and consecutive terms of 2.25 years' imprisonment for the endangerment convictions. On appeal, we affirmed Musgrove's convictions and sentences for first-degree murder and both counts of endangerment, but vacated his conviction and sentence for conspiracy to commit first-degree murder. *State v. Musgrove*, 223 Ariz. 164, 221 P.3d 43 (App. 2009). In September 2010, Musgrove sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The court dismissed the petition without conducting an evidentiary hearing, and this petition for review followed. "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). We find no abuse here.

¶2 Musgrove argues the trial court abused its discretion by denying relief on his claims that appellate counsel was ineffective in failing to file a motion for new trial pursuant to Rule 24.2, Ariz. R. Crim. P., with regard to "fabricated" evidence introduced at trial; in failing to challenge the premeditation jury instruction given at trial; and in stipulating to the admission of testimony that was harmful to Musgrove's case. Musgrove also claims that the court should have granted his motion to compel disclosure of items he claimed were necessary to support the arguments in his petition for post-conviction relief. In order to state a colorable claim of ineffective assistance of counsel, a defendant must establish counsel's performance fell below an objectively reasonable professional standard and the deficient performance was prejudicial to the defense. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *State v. Nash*, 143 Ariz. 392, 397,

694 P.2d 222, 227 (1985). In addition, “trial judges have inherent authority to grant discovery requests in [post-conviction] proceedings upon a showing of good cause.” *See Canon v. Cole*, 210 Ariz. 598, ¶ 10, 115 P.3d 1261, 1263 (2005).

¶3 Based on the record before us, we cannot say the trial court abused its discretion in denying Musgrove’s petition for post-conviction relief. In a detailed seven-page minute entry, the trial court clearly and correctly addressed the merits of each of Musgrove’s claims. We adopt the court’s ruling and find no need to repeat the court’s analysis here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Because we conclude the trial court did not abuse its discretion by denying post-conviction relief, we grant the petition for review but deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

CONCURRING:

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

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