

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

PAUL CLEMETH MELVILLE, SR., *Petitioner*.

No. 1 CA-CR 15-0796 PRPC
FILED 8-3-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2012-009547-001
The Honorable Peter C. Reinstein, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Susan L. Luder
Counsel for Respondent

Paul Clemeth Melville, Sr., Tucson
Petitioner

MEMORANDUM DECISION

Judge Jon W. Thompson delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Paul J. McMurdie joined.

T H O M P S O N, Judge:

¶1 Petitioner Paul Clemeth Melville, Sr., petitions this court for review from the summary dismissal of his first petition for post-conviction relief. We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury found Melville guilty of two counts of armed robbery and four counts of aggravated assault. The trial court sentenced him to an aggregate term of fifteen years' imprisonment and we affirmed his convictions and sentences on direct appeal. *State v. Melville*, 1 CA-CR 13-0627, 2014 WL 3882085 (Ariz. App. Jul. 29, 2014) (mem. decision).

¶3 In his petition for review, Melville first argues he has newly discovered evidence that a fingerprint analysis of the guns used in the commission of the offenses, their ammunition magazines and the cartridges in those magazines will prove that the victims handled those items. Melville argues this will in turn show that he and his codefendants possessed the guns only after they took the guns from the victims in self-defense.

¶4 We deny relief on this issue because Melville has failed to present a colorable claim of newly discovered evidence. "Newly-discovered material facts alleged as grounds for post-conviction relief are facts which come to light after the trial and which could not have been discovered and produced at trial through reasonable diligence." *State v. Dogan*, 150 Ariz. 595, 600, 724 P.2d 1264, 1269 (App. 1986). A request for a fingerprint analysis is not a newly discovered fact and Melville offers nothing but speculation that the victims' fingerprints are on any of the items on which he seeks testing. Further, while Melville argues the "CERA" method of fingerprint analysis is new, the exhibits Melville attached to his petition for post-conviction relief show this method has existed since at least 2009, five years before Melville's trial took place.

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¶5 Melville next argues his trial counsel was ineffective when counsel failed to investigate who was the registered owner of the guns; when counsel failed to object to the trial court's response to a juror's question regarding the registered owner(s) of the guns; and when counsel failed to seek an analysis of any fingerprints that might be found on the guns, magazines or cartridges.

¶6 To state a colorable claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below objectively reasonable standards and that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397, 694 P.2d 222, 227 (1985). To show prejudice, a defendant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

¶7 We deny relief because Melville has failed to present any colorable claims of ineffective assistance of trial counsel. Regarding the failure to investigate who, if anyone, was the registered owner of the guns, we recognized on direct appeal that "possession of the guns was the relevant fact for the armed robbery and aggravated assault charges, not the ownership of the guns[.]" *Melville*, 2014 WL 3882085, at *4, ¶ 19. Melville does not contest the fact that he and his codefendants possessed the guns at the relevant times. Melville also offers nothing but speculation that anyone was a registered owner. Regarding the failure to object to the court's response to the juror's question, we held on direct appeal that the court's response was proper. *Id.* at * 5, ¶ 20. There was, therefore, nothing for trial counsel to object to. Regarding the failure to analyze the guns, magazines or cartridges for fingerprints, again Melville offers nothing but speculation that any of the victims' fingerprints were on any of those items. It is just as possible that testing would have found no fingerprints other than those of Melville and his codefendants. Regardless, whether to seek a fingerprint analysis was a matter of trial strategy. "Defense counsel's determinations of trial strategy, even if later proven unsuccessful, are not ineffective assistance of counsel." *State v. Valdez*, 160 Ariz. 9, 14-15, 770 P.2d 313, 318-19 (1989) (citations omitted).

¶8 As the final issue in his petition for review, Melville argues his appellate counsel was ineffective when he did not raise an issue regarding the trial court's response to the juror's question regarding the registered owner(s) of the guns and instead filed an opening brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), thereby forcing Melville to raise the issue himself in a pro se supplemental brief. As noted above, we found

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on direct appeal that the trial court's response to the juror's question was proper. Melville offers nothing to suggest we would have held the opposite simply because counsel raised the issue. Therefore, Melville has failed to establish he suffered any prejudice.

¶9 Accordingly, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA