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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. BRANDON JAMES DROUILLARD, Petitioner.	2 CA-CR 2013-0069-PR DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007031135001SE

Honorable David K. Udall, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Gerald R. Grant — Phoenix
Attorneys for Respondent

Brandon James Drouillard — Kingman
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Brandon Drouillard petitions this court for review of the trial court's order summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its

discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Drouillard has not met his burden of establishing such abuse here.

¶2 Drouillard was convicted after a jury trial of theft of a means of transportation and sentenced to a presumptive, 11.25-year prison term. We affirmed his conviction and sentence on appeal. *State v. Drouillard*, No. 1 CA-CR 08-0970 (memorandum decision filed Sept. 1, 2009). Drouillard's conviction stems from his possession of a trailer for which he had no registration and which had been reported stolen by the victim ten days earlier, on May 28, 2007.

¶3 Drouillard sought post-conviction relief, arguing his trial counsel had been ineffective for failing to contact several witnesses. Drouillard claimed he had told counsel these witnesses would testify he had been in possession of a trailer for several weeks before the victim had reported his trailer stolen, thereby suggesting the trailer Drouillard had was not the victim's trailer. He further asserted counsel had been ineffective in failing to introduce into evidence what he claimed was a bill of sale for the trailer in his possession. The trial court denied Drouillard's petition without comment.

¶4 On review, Drouillard first claims his trial counsel was ineffective because she failed "to conduct a reasonable pre-trial investigation." He asserts that he had provided his counsel with a statement by his apartment complex manager, Davidian Taylor, that Drouillard had bought "the trailer in question around [l]ate February [or] early March 2007," but that counsel nonetheless had "refused to interview Mr. Taylor or call [him] as a witness" at trial. He additionally points out that his Rule 32 counsel had obtained an affidavit from Taylor stating Drouillard had a trailer parked in the back of the

apartment complex "for more than three months" during 2007 and the owner of the complex was "annoyed about the trailer being parked at the complex for so long," but that, although Drouillard's counsel had contacted him, "she never called [him] to testify at trial." Drouillard argues counsel should have called Taylor as a witness and, based on Taylor's statement about the apartment complex owner, should have found other witnesses to confirm that Drouillard owned a trailer before May 28, 2007.

¶5 Generally, "[t]o state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006). That is, he must show that "if the allegations are true, [they] might have changed the outcome." *State v. Runningeagle*, 176 Ariz. 59, 63, 859 P.2d 169, 173 (1993). "Proof of ineffectiveness must be a demonstrable reality rather than a matter of speculation." *State v. Meeker*, 143 Ariz. 256, 264, 693 P.2d 911, 919 (1984). Drouillard's claim plainly is not colorable because he has not shown Taylor's testimony would have benefitted him at trial. Although Taylor might have testified Drouillard had possessed a trailer before May 28, nothing in Taylor's affidavit suggests he could or would testify that trailer resembled the one stolen from the victim. And Drouillard identifies no evidence suggesting the apartment complex owner mentioned in Taylor's affidavit would have been able to offer such testimony, even had defense counsel contacted that person.[1]

[1]In his petition below, Drouillard also argued trial counsel had been ineffective in failing to contact a second individual, who would have testified Drouillard owned a

¶6 Drouillard also repeats his claim that counsel was ineffective for failing to present to the jury what Drouillard claimed was a bill of sale for the trailer. That bill of sale, however, does not include Drouillard's name, says only that it is for a "trailer" without any other description, and is for a different amount than Drouillard claimed he had paid for the trailer.[2] Thus, it would have been of no value to Drouillard's defense, and counsel plainly did not fall below prevailing professional norms in declining to present it at trial.

¶7 For the reasons stated, although review is granted, relief is denied.

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

CONCURRING:

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

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

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trailer before May 28. Drouillard does not mention this individual in his petition for review and, in any event, that witness's affidavit suffers the same weakness as Taylor's.

[2]The state attached to its response to Drouillard's petition a copy of a bill of sale disclosed by defense counsel. Drouillard does not claim on review, nor did he below, that the document is not the bill of sale to which he refers.