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.

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AUG 23 2013
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Respondent, v. ROBERT L. CONRAD, Petitioner.	2 CA-CR 2013-0221-PR DEPARTMENT B <u>MEMORANDUM DECISION</u> Not for Publication Rule 111, Rules of the Supreme Court

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2004018577001DT

Honorable Kristin Hoffman, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Shaheen P. Torgoley — Phoenix
Attorneys for Respondent

Robert Conrad — San Luis
In Propria Persona

E C K E R S T R O M, Judge.

¶1 Petitioner Robert Conrad seeks review of the trial court's order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "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). Conrad has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Conrad was convicted of aggravated assault. The trial court sentenced him to an enhanced, aggravated, fifteen-year term of imprisonment, and his conviction and sentence were affirmed on appeal. *State v. Conrad*, No. 1 CA-CR 05-1203 (memorandum decision filed Feb. 8, 2007). Conrad sought and obtained post-conviction relief, and, after a second trial, he was convicted again of aggravated assault and sentenced to fifteen years' imprisonment. The second conviction and sentence were affirmed on appeal. *State v. Conrad*, No. 1 CA-CR 10-0855 (memorandum decision filed Nov. 10, 2011).

¶3 Conrad again sought post-conviction relief, and appointed counsel filed a notice stating she had "reviewed the entire court's file" and was "unable to find a colorable issue to submit to the court pursuant to Rule 32." In a pro se petition, however, Conrad raised various claims of ineffective assistance of trial and appellate counsel and asserted the trial court had erred in relation to Conrad's previous counsel's motion to withdraw, a suppression ruling, and in sentencing.

¶4 In a thorough, well-reasoned ruling, the trial court identified all claims Conrad had raised and resolved them correctly and in a manner permitting this court to

review and determine the propriety of that order. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). The court correctly concluded that the claims raised either were not colorable or were precluded pursuant to Rule 32.2. No purpose would be served by repeating the court's ruling in its entirety; rather, we adopt it. *See Whipple*, 177 Ariz. at 274, 866 P.2d at 1360.

¶5 Additionally, we note specifically that, as the trial court pointed out, most of Conrad's claims of ineffective assistance of trial counsel related to matters of trial strategy. "Matters of trial strategy and tactics are committed to defense counsel's judgment" and cannot serve as the basis for a claim of ineffective assistance of counsel. *State v. Beaty*, 158 Ariz. 232, 250, 762 P.2d 519, 537 (1988). Trial counsel is presumed to have acted properly unless a petitioner can show that counsel's decisions were not tactical, "but, rather, revealed ineptitude, inexperience or lack of preparation." *State v. Goswick*, 142 Ariz. 582, 586, 691 P.2d 673, 677 (1984). Conrad has not overcome that presumption.

¶6 Likewise, Conrad does not direct us to any affidavits or other evidence in the record presented to the trial court to support his claim that counsel's actions fell below prevailing professional norms or that a doctor whom he alleges should have been interviewed and called as a witness would have given favorable testimony. *See* Ariz. R. Crim. P. 32.5 ("Affidavits, records, or other evidence currently available to the defendant supporting the allegations of the petition shall be attached to it."). His bald assertion that counsel erred or that the doctor's testimony may have been helpful is insufficient to

sustain his burden of demonstrating the first requirement of the test provided in *Strickland v. Washington*, 466 U.S. 668 (1984). *See State v. Donald*, 198 Ariz. 406, ¶ 21, 10 P.3d 1193, 1201 (App. 2000) (to warrant evidentiary hearing, Rule 32 claim "must consist of more than conclusory assertions"); *see also Strickland*, 466 U.S. at 687-88 (defendant must show counsel's performance deficient under prevailing professional norms and deficient performance prejudiced defense). Therefore, although we grant the petition for review, we deny relief.

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

CONCURRING:

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

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