

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

AUG 26 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0229-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JIMMIE LEE FORD,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008006114001DT

Honorable Maria Del Mar Verdin, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Arthur Hazelton

Phoenix
Attorneys for Respondent

Jimmie Lee Ford

Florence
In Propria Persona

K E L L Y, Presiding Judge.

¶1 Petitioner Jimmie Ford 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). Ford has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Ford was convicted of possession of marijuana, possession of narcotic drugs, and two counts of aggravated assault. The trial court imposed enhanced, aggravated and presumptive, concurrent and consecutive prison terms totaling forty-six years. Ford’s convictions and sentences for the drug-related counts were affirmed on appeal, as were his aggravated assault convictions, but his sentences on the aggravated assault counts were vacated with orders to resentence him after a “retrial on the State’s allegation of a prior dangerous felony.” *State v. Ford*, No. 1 CA-CR 09-0114 (memorandum decision filed July 13, 2010). The state withdrew the allegation of a prior felony conviction, and Ford was resentedenced to fifteen years on each aggravated assault count instead of the eighteen years originally ordered.

¶3 Ford initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating he had “investigated the case for any and all colorable claims” and had found none. In a pro se petition, however, Ford raised numerous claims of wrong-doing by various law-enforcement and prosecution personnel, trial error, and ineffective assistance of counsel. The trial court summarily denied relief.

¶4 In his petition for review, Ford merely lists the issues he asserted below, making a specific argument only as to his ineffective assistance of counsel claim. Ford’s argument on that point consists only of an assertion that it “is obvious” that counsel’s performance was deficient and that he had “met th[e] test” to establish he was prejudiced

by counsel's failures. Because Ford has failed to comply with the requirements of Rule 32.9(c) in any meaningful way, we could deny relief solely on that basis.¹

¶5 But in any event, we cannot say the trial court abused its discretion in rejecting Ford's claims. With the exception of his claims of ineffective assistance of counsel, Ford's claims are precluded by his failure to raise them at trial or on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3). His claims of ineffective assistance of counsel also fail. 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). "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). There is "[a] strong presumption" that counsel "provided effective assistance," *State v. Febles*, 210 Ariz. 589, ¶ 20, 115 P.3d 629, 636 (App. 2005), which the defendant must overcome by providing evidence that counsel's conduct did not comport with prevailing professional norms, *see State v. Herrera*, 183 Ariz. 642, 647, 905 P.2d 1377, 1382 (App. 1995). Moreover, tactical or strategic decisions rest with counsel, *State v. Lee*, 142 Ariz. 210, 215, 689 P.2d 153, 158 (1984), and we will presume "that the challenged action was sound trial strategy under the circumstances," *State v. Stone*, 151 Ariz. 455, 461, 728 P.2d 674, 680 (App. 1986). Thus, "[d]isagreements as to trial

¹Ford expands on his arguments to some degree in his reply to the state's response to his petition for review. But this does not excuse his failure to comply with the petition requirements, as the reply is allowed solely to respond "to matters addressed in the response." Ariz. R. Crim. P. 32.9(c)(2).

strategy or errors in trial [tactics] will not support a claim of ineffective assistance of counsel as long as the challenged conduct could have some reasoned basis.” *Meeker*, 143 Ariz. at 260, 693 P.2d at 915. Ford has not established otherwise here.

¶6 Ford provided no affidavits or other evidence in the trial court suggesting counsel’s actions fell below prevailing professional norms. *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 is insufficient to sustain his burden of demonstrating the first requirement of the *Strickland* test. *Strickland v. Washington*, 466 U.S. 668, 687 (1984) (to state colorable claim defendant must show counsel’s performance was deficient and prejudiced defense); *see also 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”).

¶7 For these reasons, although we grant the petition for review, we deny relief.

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

CONCURRING:

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

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