

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JONATHAN LEIGH SOSNOWICZ,
Petitioner.

No. 2 CA-CR 2016-0065-PR
Filed April 13, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County
No. CR2008171268001SE
The Honorable Maria del Mar Verdin, Judge

REVIEW GRANTED; RELIEF DENIED

Jonathan Sosnowicz, Buckeye
In Propria Persona

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Jonathan Sosnowicz seeks review of the trial court's ruling summarily denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Sosnowicz has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Sosnowicz was convicted of second-degree murder and three counts of aggravated assault. His convictions stemmed from an incident in which he drove his large SUV into a crowd, killing one person, after a physical altercation with the homicide victim. Sosnowicz was sentenced to concurrent and consecutive prison terms totaling 30.5 years. We affirmed his convictions and sentences on appeal. *State v. Sosnowicz*, 229 Ariz. 90, 270 P.3d 917 (App. 2012); *State v. Sosnowicz*, 1 CA-CR 10-789 (memorandum decision filed Mar. 8, 2012).

¶3 Sosnowicz sought post-conviction relief, arguing his trial counsel had been ineffective in failing to timely object to the prosecutor's "repeated[]" references to Sosnowicz having had "two girlfriends" and by "calling defense witnesses who were drunk" at the time of Sosnowicz's offenses and who "provided only damaging testimony." The trial court summarily denied relief, and this petition for review followed.¹

¹Although Sosnowicz was represented by counsel during his post-conviction proceeding below, he filed his petition for review pro se.

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¶4 On review, Sosnowicz repeats his claims of ineffective assistance of counsel. As in his petition below, however, he does not identify the relevant standard by which we assess a claim of ineffective assistance, much less explain how his claims meet that standard. This deficiency alone warrants the denial of relief. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.2d 679, 683 (App. 2013) (insufficient argument waives review on review).

¶5 In any event, Sosnowicz has not identified any evidence or authority suggesting that counsel's conduct fell below prevailing professional norms; nor has he established resulting prejudice. *See State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (to establish counsel was ineffective, defendant must "show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced [him]"). Decisions whether to object and which witnesses to call are strategic. *See State v. Denz*, 232 Ariz. 441, ¶ 11, 306 P.3d 98, 102 (App. 2013); *see also State v. Davis*, 226 Ariz. 97, ¶ 20, 244 P.3d 101, 106 (App. 2010). Thus, they can support a claim of ineffective assistance only if the defendant shows counsel's conduct had no reasoned basis. *Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d at 101.

¶6 Sosnowicz has not made this showing. Counsel objected to the prosecutor's questions concerning Sosnowicz's relationships, but the trial court overruled the objection. Counsel may have decided that repeated objections would have further emphasized the evidence. And, as the state pointed out in its response below, the testimony of witnesses called by the defense were consistent with Sosnowicz's own version of events and supported the inference that his actions were accidental.

¶7 Moreover, as we noted in our decision on appeal, the evidence against Sosnowicz was "extremely strong." *Sosnowicz*, 229 Ariz. 90, ¶ 28, 270 P.3d at 925. In light of that fact, even assuming counsel's performance had been deficient, Sosnowicz has not shown the result of the proceeding would have been different.

¶8 Although review is granted, relief is denied.