IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JUAN CARLOS PEREZ-CONTRERAS,
Petitioner.

No. 2 CA-CR 2017-0115-PR
Filed April 20, 2017

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NOT FOR PUBLICATION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 Mohave County
No. CR201101264
The Honorable Derek Carlisle, Judge

REVIEW GRANTED; RELIEF DENIED

Juan Carlos Perez-Contreras, Tucson
In Propria Persona

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Vásquez concurred.

H OW A R D, Presiding Judge:

¶1 Juan Perez-Contreras 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 that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Perez-Contreras has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Perez-Contreras was convicted of possession of a dangerous drug for sale, possession of drug paraphernalia, and resisting arrest. The trial court sentenced him to concurrent and consecutive prison terms totaling 8.5 years. On appeal, he argued that testimony about statements made by the individual who arranged the drug sale that led to his arrest were inadmissible hearsay and violated his rights under the Confrontation Clause. We rejected that argument, noting Perez-Contreras had not objected to those statements and, therefore, his claims were subject to fundamental error review, and concluding he had not been prejudiced by the testimony. *See State v. Henderson*, 210 Ariz. 561, ¶¶ 19-20, 115 P.3d 601, 607 (2005) (failure to raise issue at trial forfeits all but fundamental, prejudicial error). We therefore affirmed his convictions and sentences on appeal. *State v. Perez-Contreras*, No. 1 CA-CR 12-0640 (Ariz. App. Jun. 27, 2013) (mem. decision).

¶3 Perez-Contreras then sought post-conviction relief, arguing his trial counsel had been ineffective in failing to object to the testimony on hearsay and confrontation grounds. After an evidentiary hearing, the trial court denied relief, concluding counsel had deliberately forgone objecting to the testimony because she did

not want the state to call the individual to testify. This pro se petition for review followed.

¶4 On review, Perez-Contreras reasserts his claim that counsel was ineffective for failing to object to testimony on hearsay and confrontation grounds. To obtain relief, Perez-Contreras was required to establish that counsel's conduct fell below prevailing professional norms and that he was prejudiced thereby. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). "To establish 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.'" *State v. Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d 61, 64 (2016), *quoting Hinton v. Alabama*, ___ U.S. ___, ___, 134 S. Ct. 1081, 1089 (2014).

¶5 We must presume counsel's conduct "'falls within the wide range of reasonable professional assistance' that 'might be considered sound trial strategy.'" *State v. Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d 98, 101 (App. 2013), *quoting Strickland*, 466 U.S. at 689. Therefore, "disagreements about trial strategy will not support an ineffective assistance claim if 'the challenged conduct has some reasoned basis,' even if the tactics counsel adopts are unsuccessful." *Id.* (citation omitted), *quoting State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985).

¶6 The decision whether to object is often strategic. *See State v. Davis*, 226 Ariz. 97, ¶ 20, 244 P.3d 101, 106 (App. 2010). Perez-Contreras does not identify any error in the trial court's determination that counsel's decision to not object was a strategic one. And, in any event, we determined on appeal that the admission of the purportedly objectionable testimony did not prejudice Perez-Contreras. Thus, he cannot demonstrate there is a reasonable likelihood the result of his trial would have been different.

¶7 Perez-Contreras additionally argues the trial court erred because it "failed to provide[] a finding of fact and conclusion of law." We disagree. The court exhaustively reviewed the relevant facts and stated its conclusions of law in announcing its ruling from the bench following the evidentiary hearing. *See* Ariz. R. Crim. P. 32.8(d)

(requiring court to "make specific findings of fact, and state expressly its conclusions of law relating to each issue presented" in rendering decision after an evidentiary hearing).

¶8 Perez-Contreras also contends that, had counsel objected, the purported error would not have been subject to fundamental error review and "the outcome of the appeal would have been different." But he does not develop this claim in any meaningful way, and we therefore do not address it further. *State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review).

¶9 We grant review but deny relief.