IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

KHAMBREL MAURICE WRIGHT,
Petitioner.

No. 2 CA-CR 2017-0236-PR
Filed November 6, 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NOT FOR PUBLICATION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 Pima County
No. CR20144393003
The Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Joel Feinman, Pima County Public Defender
By David J. Euchner, Deputy Public Defender, Tucson
Counsel for Petitioner

MEMORANDUM DECISION

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

E S P I N O S A, Judge:

¶1 Khambrel Wright seeks review of the trial court's order denying, after an evidentiary hearing, 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. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Wright has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Wright was convicted of possession of a narcotic drug and possession of drug paraphernalia and sentenced to concurrent prison terms, the longer of which was six years. Counsel filed a brief complying with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating his review of the record disclosed no arguable issue to raise on appeal. We reviewed the record and, finding no fundamental error, affirmed Wright's convictions and sentences. *State v. Wright*, No. 2 CA-CR 2015-0311 (Ariz. App. Apr. 5, 2016) (mem. decision).

¶3 Wright sought post-conviction relief, contending his trial and appellate counsel had been ineffective with regard to a motion to suppress. Wright had argued in that motion that the warrant supporting the search of his residence was not supported by probable cause. The trial court had denied the motion, concluding that although the warrant affidavit did not provide probable cause, the law enforcement officers had relied on the warrant in good faith. In his petition, Wright asserted trial counsel had not "adequately" argued that the good-faith exception did not apply and appellate counsel was ineffective by failing to raise the issue on appeal. After an evidentiary hearing, the court denied relief. This petition for review followed.

¶4 On review, Wright repeats his argument that his appellate counsel was ineffective for failing to argue the good-faith exception did not apply.[1] To be entitled to relief for the ineffective assistance of appellate counsel, Wright is required to establish both that counsel fell below professional standards by failing to raise the issue on appeal and that, had counsel raised the issue, "the court of appeals would have reversed [his] . . . conviction[s]." *State v. Bennett*, 213 Ariz. 562, ¶¶ 21, 30, 146 P.3d 63, 68, 70 (2006).

¶5 We need not address whether appellate counsel fell below prevailing professional standards because Wright has not shown resulting prejudice. "[E]vidence seized by law enforcement officers acting in good faith, but in reliance on a faulty warrant, should not be suppressed." *State v. Dean*, 241 Ariz. 387, ¶ 6, 388 P.3d 24, 26 (App. 2017), *citing United States v. Leon*, 468 U.S. 897, 922 (1984). There are four exceptions to that general rule:

> (1) when a magistrate is misled by information that the affiant knew was false or would have known was false but for his or her reckless disregard for the truth; (2) when the issuing magistrate "wholly abandon[s]" his or her judicial role; (3) when a warrant is based on an affidavit "so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable"; and (4) when a warrant is "so facially deficient . . . that the executing officers cannot reasonably presume it to be valid."

Id., *quoting State v. Hyde*, 186 Ariz. 252, 273, 921 P.2d 655, 676 (1996), *quoting Leon*, 468 U.S. at 923 (alterations in *Hyde*).

[1]Wright does not assert the trial court erred in rejecting his claim of ineffective assistance of trial counsel.

¶6 Wright complains the trial court "failed to apply" the third exception, which "requires the officer to exercise some independent judgment and not merely rely on the warrant." He claims the court instead "focused on the subjective mindset of the particular officers here, rather than the objective standard." We disagree. At the evidentiary hearing on the motion to suppress, the court stated the good-faith exception would not apply if "no reasonable officer" would have relied on the probable cause supporting the warrant.

¶7 But Wright ignores that statement, instead pointing to the trial court's comment that the officers in this case did "exactly what they're expected to do" by applying for a warrant, presenting "everything that they've got," and allowing the magistrate to "make[] the decision about whether or not [it] believe[s] that [the information] amounts to probable cause." Nothing about that statement suggests the court applied the wrong standard. Wright also insists that no reasonable officer could have relied on the warrant "because it [wa]s quite clearly lacking in probable cause." But he has not developed this argument in any meaningful way, *see State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013) (insufficient argument waives claim on review), much less established that the court abused its discretion by concluding the officers could rely on the warrant in good faith, *see Dean*, 241 Ariz. 387, ¶¶ 4, 6, 388 P.3d at 26. Accordingly, he has not shown his convictions would have been reversed on appeal had appellate counsel raised the issue.[2] *See Bennett*, 213 Ariz. 562, ¶ 30, 146 P.3d at 70.

¶8 Although we grant review, relief is denied.

[2]Because Wright has not demonstrated this issue would have entitled him to relief on appeal, we need not address his argument that the trial court erred by concluding our review of the case pursuant to *Anders* precluded a finding of prejudice.