

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ROBERT ARTHUR ERGONIS,  
*Petitioner.*

No. 2 CA-CR 2019-0014-PR  
Filed July 31, 2019

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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NOT FOR PUBLICATION  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. 31.19(e).*

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Petition for Review from the Superior Court in Pima County  
No. CR20074823002  
The Honorable John Hinderaker, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Mark Brnovich, Arizona Attorney General  
By Nicholas Klingerman, Assistant Attorney General, Tucson  
*Counsel for Respondent*

The Law Offices of Stephanie K. Bond P.C., Tucson  
By Stephanie K. Bond  
*Counsel for Petitioner*

STATE v. ERGONIS  
Decision of the Court

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MEMORANDUM DECISION

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

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V Á S Q U E Z, Chief Judge:

¶1 Petitioner Robert Ergonis 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 (App. 2007). Ergonis has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Ergonis was convicted of kidnapping, aggravated assault, armed robbery, assault, and aggravated robbery. The trial court imposed a combination of concurrent and consecutive terms totaling 22.5 years’ imprisonment. This court vacated a criminal restitution order, but otherwise affirmed his convictions and sentences on appeal. *State v. Ergonis*, No. 2 CA-CR 2012-0327 (Ariz. App. July 30, 2014) (mem. decision).

¶3 Ergonis thereafter sought post-conviction relief. Appointed counsel filed a petition arguing Ergonis had received ineffective assistance of trial counsel based on counsel’s failure to object to improper vouching by the prosecutor, to “cure” the allegedly duplicitous indictment and charges, to “pursue a justification defense and instructions,” and to object to consecutive sentences. Appointed counsel further alleged appellate counsel had been ineffective for failing to raise several of these issues. Counsel also argued that at a hearing held pursuant to *State v. Donald*, 198 Ariz. 406, ¶ 17 (App. 2000), Ergonis was incorrectly informed of his potential prison terms if convicted, claimed newly discovered evidence as to “the truth and veracity of two state witnesses and the alleged victim” entitled Ergonis to relief, and alleged a “disclosure violation” by the state. The trial court allowed Ergonis to file a pro se petition as well, and in that petition Ergonis argued he had been denied his right to counsel, he had received ineffective assistance of trial and appellate counsel based on grounds other than those raised by Rule 32 counsel, and the trial court had erred in various evidentiary rulings. Ergonis also raised various claims

STATE v. ERGONIS  
Decision of the Court

about the grand jury proceeding and alleged the state had committed *Brady*<sup>1</sup> violations.

¶4 The trial court summarily denied relief on all claims except that related to the sufficiency of the *Donald* hearing. After a hearing on that claim, the court denied relief on that issue as well.

¶5 On review, Ergonis argues the trial court abused its discretion in denying relief on his claim related to the *Donald* hearing and in summarily denying relief on his remaining claims of ineffective assistance of counsel and newly discovered evidence. Our review of the court's factual findings "is limited to a determination of whether those findings are clearly erroneous"; we "view the facts in the light most favorable to sustaining the lower court's ruling, and we must resolve all reasonable inferences against the defendant." *State v. Sasak*, 178 Ariz. 182, 186 (App. 1993). When "the trial court's ruling is based on substantial evidence, this court will affirm." *Id.* And, "[e]vidence is not insubstantial merely because testimony is conflicting or reasonable persons may draw different conclusions from the evidence." *Id.*

¶6 Ergonis had the burden of proving his factual allegations by a preponderance of the evidence. *See* Ariz. R. Crim. P. 32.8(c). And, the trial court was "the sole arbit[er] of the credibility of witnesses" at the evidentiary hearing. *State v. Fritz*, 157 Ariz. 139, 141 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding). Ergonis's argument on review amounts to a request for this court to reweigh the evidence presented at the evidentiary hearing; that we will not do. *See Sasak*, 178 Ariz. at 186 ("It is the duty of the trial court to resolve any conflicts in the evidence."). The court's factual determinations were supported by evidence presented at the hearing, and it clearly identified the remainder of the claims Ergonis had raised and resolved them correctly in thorough, well-reasoned rulings, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993) (when trial court has correctly ruled on issues raised "in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court's correct ruling in a written decision").

¶7 Although we grant the petition for review, we deny relief.

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<sup>1</sup>*Brady v. Maryland*, 373 U.S. 83 (1963).