

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RANDALL FELIX SMITH,
Petitioner.

No. 2 CA-CR 2019-0086-PR
Filed July 8, 2019

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NOT FOR PUBLICATION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).

Petition for Review from the Superior Court in Pima County
No. CR20122221001
The Honorable Javier Chon-Lopez, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Office of Stephanie J. Meade, Tucson
By Stephanie J. Meade
Counsel for Petitioner

STATE v. SMITH
Decision of the Court

MEMORANDUM DECISION

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

V Á S Q U E Z, Chief Judge:

¶1 Randall Smith seeks review of the trial court’s denial, after an evidentiary hearing on remand, of his petition and supplemental petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find no such abuse here.

¶2 After a jury trial, Smith was convicted of attempted production of marijuana of an amount less than two pounds. The trial court suspended the imposition of sentence and placed Smith on an eighteen-month term of probation.¹ We affirmed his conviction and the imposition of probation on appeal, *State v. Smith*, No. 2 CA-CR 2013-0166 (Ariz. App. May 7, 2014) (mem. decision), and granted relief on his petition for review of the court’s denial of his petition for post-conviction relief following an evidentiary hearing, *State v. Smith*, 244 Ariz. 482, ¶ 12 (App. 2018). On review, we determined that trial counsel’s conduct fell below prevailing professional standards when he failed to include a Fourth Amendment curtilage violation claim in a motion to suppress the search warrant leading to Smith’s arrest; we remanded for a determination whether Smith was prejudiced by counsel’s deficient conduct. *Smith*, 244 Ariz. 482, ¶¶ 10-12; *see State v. Denz*, 232 Ariz. 441, ¶ 6 (App. 2013), *citing Strickland v. Washington*, 466 U.S. 668, 687-88 (1984).

¹The record shows that on March 18, 2019, based on Smith’s successful discharge from probation and his payment of all fees, fines and financial assessments, the trial court granted his motion to set aside his judgment of guilt.

STATE v. SMITH
Decision of the Court

¶3 As directed, the trial court conducted an evidentiary hearing on remand. In its written, under advisement ruling, the court noted it had reviewed the transcripts of both of the Rule 32 evidentiary hearings and of the first search warrant application,² the supplemental petitions on remand, the appellate decisions in this matter, and the arguments of counsel; the court further noted it intended to rely on the facts as determined in the appellate decisions and the second search warrant transcript. The court then determined that although the officers had illegally entered and searched the curtilage of Smith’s home, “probable cause to authorize the search warrant still existed based on independent evidence [presented to the magistrate] that was not obtained from the curtilage violation,” and that the officers would have sought and obtained a search warrant even without the illegally obtained evidence. The court concluded the curtilage evidence was, in any event, admissible at trial, “as it was legally obtainable pursuant to a valid search warrant based on probable cause that did not include the curtilage evidence.” Notably, the court also determined that because Smith suffered no prejudice from the officers’ curtilage violation, his motion to suppress the search warrant for lack of probable cause would have been denied even if counsel had included the curtilage claim. This petition for review followed.

¶4 On review, Smith argues the trial court abused its discretion by denying his claim that he was prejudiced by trial counsel’s failure to assert a Fourth Amendment curtilage violation in the motion to suppress. Arguing that the court improperly relied upon criminal activity at his son’s residence and that the “totality” of the evidence failed to “link[]” any criminal activity to his residence, Smith asserts probable cause was not established. *Cf. United States v. Ocampo*, 937 F.2d 485, 490 (9th Cir. 1991) (based on totality of circumstances, otherwise innocent behavior may indicate criminal activity); *see United States v. Gil*, 58 F.3d 1414, 1418 (9th Cir. 1995) (court issuing warrant entitled to rely on training and experience of affiant officers).

²As we noted in our decision on appeal, the officers’ first application for a search warrant was denied. *Smith*, No. 2 CA-CR 2013-0166, ¶¶ 5, 7.

STATE v. SMITH
Decision of the Court

¶5 We “accord great deference to the trial court’s finding of lack of prejudice in ineffective assistance of counsel cases.” *State v. Waitkus*, 161 Ariz. 387, 389 (App. 1989). Giving such deference to the finding of lack of prejudice here, *see id.*, we cannot say the court abused its discretion in denying relief. We have reviewed the record and conclude the court correctly rejected Smith’s claim in its thorough and well-reasoned ruling. We see no reason to repeat the court’s entire analysis here. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993). Instead, we adopt it. *See id.*

¶6 Accordingly, we grant review, but we deny relief.