IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ARNOLD TERRELL HAWKINS,
Petitioner.

No. 2 CA-CR 2019-0257-PR
Filed July 2, 2020

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201502452
The Honorable Delia R. Neal, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Kent P. Volkmer, Pinal County Attorney
By Geraldine L. Roll, Deputy County Attorney, Florence
Counsel for Respondent

Harriette P. Levitt, Tucson
Counsel for Petitioner

MEMORANDUM DECISION

Presiding Judge Eppich authored the decision of the Court, in which Judge Espinosa and Judge Eckerstrom concurred.

E P P I C H, Presiding Judge:

¶1 Petitioner Arnold Hawkins seeks review of the trial court's denial, after an evidentiary hearing, of his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P.[1] 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 Following a retrial, Hawkins was convicted in November 2015 of four counts of sexual conduct with a minor, one count of sexual abuse, and one count of child molestation. The trial court sentenced him to concurrent and consecutive prison terms totaling ninety-seven years.[2] We affirmed Hawkins's convictions and sentences as modified on appeal. *State v. Hawkins*, No. 2 CA-CR 2016-0073 (Ariz. App. Feb. 13, 2017) (mem. decision). Hawkins then filed a petition for post-conviction relief, raising numerous claims of ineffective assistance of his trial attorney, Paula Cook. Following an evidentiary hearing, at which attorney Matthew Long, Hawkins's sister, and Cook testified, the court denied relief.[3] This petition for review followed.

[1] Effective January 1, 2020, our supreme court amended the post-conviction relief rules. Ariz. Sup. Ct. Order R-19-0012 (Aug. 29, 2019). The amendments apply to all cases pending on the effective date unless a court determines that "applying the rule or amendment would be infeasible or work an injustice." *Id.* Because it is neither infeasible nor works an injustice here, we cite to and apply the current version of the rules.

[2]Hawkins misstates that he was sentenced to 102 years in prison.

[3]The evidentiary hearing appears to have been held on May 20, 2019; the first page of the transcript of that hearing and the court's dismissal of the Rule 32 petition, however, cite to March 20, 2019, as the date of the hearing.

¶3 To prevail on a claim of ineffective assistance of counsel, a defendant must establish both "that counsel's performance fell below reasonable standards and that the deficient performance prejudiced him." *Roseberry*, 237 Ariz. 507, ¶ 10 (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim." *State v. Bennett*, 213 Ariz. 562, ¶ 21 (2006). Under the first prong of the *Strickland* test, "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 (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.'" *State v. Varela*, 245 Ariz. 91, ¶ 8 (App. 2018) (quoting *Denz*, 232 Ariz. 441, ¶ 7). To show prejudice under the second prong, a defendant must establish there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*.

¶4 On review, Hawkins reasserts his claims of ineffective assistance of counsel, maintaining that Cook "essentially abandoned her role as a defense attorney." Specifically, he argues Cook was ineffective in failing to 1) adequately cross-examine the victim and her mother, and establish the mother's motivation to encourage a false claim against him; 2) cross-examine the state's blind expert witness, thereby demonstrating Cook's lack of education on how to effectively cross-examine a blind expert and her lack of knowledge about current concepts relevant to cases involving child sex offenses; 3) investigate and present evidence showing Hawkins had a medical condition that rendered him impotent and; 4) meaningfully cross-examine Detective Stephen Knauber, or file any pretrial motions to prevent Knauber from testifying about topics such as victimology, disclosure and recantation, areas in which Knauber purportedly lacked experience.

¶5 While Hawkins may disagree with Cook's advocacy at trial, we do not find his claims of ineffective assistance persuasive. Cook ultimately identified the weaknesses in the state's case and drew the jury's attention to Hawkins's best arguments for acquittal in her opening and closing remarks. For example, Cook emphasized to the jury that the victim's representations during the two forensic interviews were inconsistent; the victim acknowledged she had lied; and her mother, who

had repeatedly asked her if she was having sex with Hawkins, had characterized her daughter as a "good liar." Explaining that the gifts Hawkins had purchased for the victim were "nothing outrageous," Cook maintained that he had been "a father figure" to the victim, and that his expressed concern that "he might be going to jail" when confronted with the victim's allegations were a normal reaction under the circumstances. Cook also pointed out that the relationship between the victim's mother and Hawkins was "not the smoothest" when the allegations were made.

¶6 The record establishes that Cook took the necessary steps to put Hawkins's theory of the case into evidence. She adequately drew the jury's attention to why it should question the victim's credibility, permitting it to assess her testimony first hand. Because the record supports the trial court's conclusion that Cook's performance was not deficient, we decline Hawkins's invitation to address every feature of counsel's performance, including his multiple claims of how she could have presented his case more effectively.[4]

¶7 Finally, Hawkins argues the trial court applied the incorrect standard for a claim of ineffective assistance of counsel. He maintains the court improperly prevented Long, the attorney who represented him on appeal and who testified about his experience with sex-offense cases at the evidentiary hearing, from legally concluding Cook was incompetent. However, the court permitted Long to testify extensively about his experience as an attorney handling sex-offense cases, his view of how a competent attorney should have handled this trial, and all of the ways in which he faulted Cook's performance. In its written ruling, the court observed that "both attorneys [Long and Cook] have extremely different – almost opposite – demeanors," and noted that although "Ms. Cook did not defend the case in the manner in which Mr. Long may have," there was insufficient evidence to find her performance deficient under *Strickland*. Because the record supports a finding that Cook took all of the steps necessary to provide Hawkins with a fair trial, and in light of the court's correct finding that Cook's performance was not deficient, we do not address this argument.

---

[4]In view of our conclusion that the trial court properly found Cook's performance professionally adequate, we likewise decline Hawkins's invitation to address whether the court misstated the standard for prejudice in an ineffective assistance claim. *See Bennett*, 213 Ariz. 562, ¶ 21 ("Failure to satisfy either prong of the Strickland test is fatal to an ineffective assistance of counsel claim.").

¶8 Accordingly, we grant review but deny relief.