

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

STANSON KEE JOE,  
*Petitioner.*

No. 2 CA-CR 2023-0032-PR  
Filed March 9, 2023

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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NOT FOR PUBLICATION  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 Navajo County  
No. S0900CR200901002  
The Honorable Thomas L. LeClaire, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

The Rigg Law Firm PLLC, Pinetop  
By Brett R. Rigg  
*Counsel for Petitioner*

STATE v. JOE  
Decision of the Court

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MEMORANDUM DECISION

Presiding Judge Brearcliffe authored the decision of the Court, in which Judge Eckerstrom and Judge Kelly concurred.

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B R E A R C L I F F E, Presiding Judge:

¶1 Petitioner Stanson Joe seeks review of the trial court’s order dismissing 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. Ainsworth*, 250 Ariz. 457, ¶ 1 (App. 2021) (quoting *State v. Swoopes*, 216 Ariz. 390, ¶ 4 (App. 2007)). Joe has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Joe was convicted of kidnapping, aggravated assault, and nine counts of sexual assault. The trial court sentenced him to concurrent and consecutive prison terms totaling more than 100 years. Joe’s convictions and sentences were affirmed on appeal. *State v. Joe*, 234 Ariz. 26 (App. 2014).

¶3 Joe thereafter sought post-conviction relief, arguing he had received ineffective assistance of counsel (IAC) based on trial counsel’s failure to obtain a Navajo interpreter to assist him and counsel having “waived the Rule 11 examinations” the trial court initially ordered. After a nine-day evidentiary hearing and the filing of post-hearing memoranda, the court denied relief.

¶4 On review, Joe argues the trial court abused its discretion in rejecting his claim that counsel had been ineffective “by failing to ensure a Navajo Interpreter assisted” him.<sup>1</sup> Our review of the court’s factual

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<sup>1</sup>Joe has abandoned his claim related to a Rule 11 examination on review, and we therefore do not address it. *See* Ariz. R. Crim. P. 32.16(c)(2)(D); *State v. Rodriguez*, 227 Ariz. 58, n.4 (App. 2010) (declining to address argument not raised in petition for review). Likewise, although he raised other issues in an initial, pro se petition for post-conviction relief, he abandoned those claims by the time of the evidentiary hearing. The trial court therefore deemed them waived, and because he has not raised them

STATE v. JOE  
Decision of the Court

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.*; see also *State v. Fritz*, 157 Ariz. 139, 141 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding).

¶5 “To prevail on an IAC claim, a defendant must demonstrate that counsel’s conduct fell below an objective standard of reasonableness and that he was prejudiced thereby.” *State v. Bigger*, 251 Ariz. 402, ¶ 8 (2021) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984)). A court must therefore consider, “in light of all the circumstances, whether counsel’s performance was reasonable under prevailing professional norms.” *Id.* (quoting *State v. Pandeli*, 242 Ariz. 175, ¶ 5 (2017)). “Representation falls below the ‘prevailing professional norms’ of the legal community if counsel’s performance was unreasonable under the circumstances.” *Id.* ¶ 10 (quoting *State v. Miller*, 251 Ariz. 99, ¶ 10 (2021)).

¶6 Our supreme court has long directed that “an indigent defendant who is unable to speak and understand the English language should be afforded the right to have the trial proceedings translated into his native language in order to participate effectively in his own defense.” *State v. Natividad*, 111 Ariz. 191, 194 (1974). But a defendant is not entitled to a new trial based on the lack of an interpreter when the record shows he or she “was able to understand English.” *State v. Kabinto*, 106 Ariz. 575, 577 (1971). A trial court has discretion to determine “whether a defendant possesses the requisite degree of fluency” so that his rights “will not be abridged.” *Natividad*, 111 Ariz. at 194.

¶7 In this case, Joe was initially assigned an interpreter. But, after defense counsel indicated that Joe had said “he understands English to communicate in English” and that counsel did not have difficulty with Joe understanding him, the trial court rescinded the order for an interpreter. The question of whether Joe fully understood English was raised a few

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on review, we do the same. See Ariz. R. Crim. P. 32.16(c)(2)(D); *Rodriguez*, 227 Ariz. 58, n.4.

STATE v. JOE  
Decision of the Court

times during pretrial proceedings, primarily during changes of counsel.<sup>2</sup> During a hearing in June 2011, Joe indicated that he had some difficulty understanding certain words, and the court again appointed an interpreter. Joe was appointed new counsel in February 2012, and, “[d]ue to a conflict,” his case was transferred to another division of the superior court in March. An interpreter was not present at hearings thereafter or at Joe’s trial.

¶8 At the Rule 32 evidentiary hearing, Joe had the burden of proving his factual allegations by a preponderance of the evidence. *See* Ariz. R. Crim. P. 32.13(c). And, the trial court was “the sole arbit[er] of the credibility of witnesses.” *Fritz*, 157 Ariz. at 141; *see also Sasak*, 178 Ariz. at 186 (“duty of the trial court to resolve any conflicts in the evidence”). The court’s factual determination that Joe “was able to communicate and understand the English language” was supported by evidence presented at the hearing.

¶9 As the trial court pointed out, Joe interacted directly with the court in English during the pretrial proceedings. At the evidentiary hearing, multiple attorneys who had represented Joe and members of the prison staff who had conversed with him all testified that he had understood their communications in English. Likewise, the interpreter who served during some of the pretrial hearings and in meetings with Joe and his attorney testified that Joe had “wanted to go speak up for himself more often than not” and that when interpreting between Joe and his attorney they “spoke to each other in English” for “most of the time.”

¶10 Although contrary evidence about Joe’s difficulties in speaking and understanding English was presented, the trial court was in the best position to evaluate the evidence and Joe’s level of understanding. *Natividad*, 111 Ariz. at 194; *see also Fritz*, 157 Ariz. at 141. We will not reweigh the evidence; rather, because the court’s finding that an interpreter was not required is supported by reasonable evidence, we accept it. *See Sasak*, 178 Ariz. at 186; *see also Natividad*, 111 Ariz. at 194. In view of this finding, we cannot say counsel’s failure to request an interpreter was unreasonable. *See Bigger*, 251 Ariz. 402, ¶¶ 8, 10. The court therefore did not abuse its discretion in denying relief. *See State v. Salazar*, 146 Ariz. 540, 541 (1985) (defendant not entitled to relief if either element of IAC test not established).

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<sup>2</sup>On the record before us, Joe was represented by at least five attorneys during the time leading up to trial.

STATE v. JOE  
Decision of the Court

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