

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JEFFREY RAMONE MATHIS,
Petitioner.

No. 2 CA-CR 2024-0225-PR
Filed December 6, 2024

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NOT FOR PUBLICATION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 Maricopa County
No. CR2016137807001DT
The Honorable Michael W. Kemp, Judge

REVIEW GRANTED; RELIEF DENIED

Jeffrey Ramone Mathis, Eloy
In Propria Persona

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MEMORANDUM DECISION

Chief Judge Staring authored the decision of the Court, in which Presiding Judge Gard and Judge Eckerstrom concurred.

STARING, Chief Judge:

¶1 Petitioner Jeffrey Mathis seeks review of the trial court’s order summarily dismissing his petition for post-conviction relief filed under 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)). Mathis has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Mathis was convicted of first-degree murder, drive-by shooting, attempted first-degree murder, and aggravated assault. The trial court sentenced him to life in prison with the possibility of release after twenty-five years, a concurrent prison term of 15.75 years, and a consecutive prison term of 15.75 years to be served concurrently with an 11.25-year prison term. We affirmed his convictions and sentences on appeal. *State v. Mathis*, 1 CA-CR 18-0169 (Ariz. App. Oct. 17, 2019) (mem. decision).

¶3 Mathis sought post-conviction relief, raising claims of prosecutorial misconduct, a “Brady list” disclosure violation, insufficiency of the evidence, and ineffective assistance of counsel. The trial court summarily dismissed the petition. This petition for review followed.¹

¶4 On review, Mathis maintains the trial court erred in summarily dismissing his petition. He contends the court should have granted an evidentiary hearing on his claims. But an evidentiary hearing is

¹Mathis does not contend the trial court erred in dismissing his claim regarding the sufficiency of the evidence. Nor does he maintain any error with regard to ineffective assistance of appellate counsel. Accordingly, we deem any such issue waived. See Ariz. R. Crim. P. 32.16(c)(4) (“A party’s failure to raise any issue that could be raised in the petition for review . . . constitutes a waiver of appellate review of that issue.”).

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required only when a defendant “presents a colorable claim, that is a claim which, if defendant’s allegations are true, might have changed the outcome.” *State v. Gutierrez*, 229 Ariz. 573, ¶ 25 (2012) (quoting *State v. Watton*, 164 Ariz. 323, 328 (1990)).

¶5 Mathis first argues the trial court erred by dismissing his claim of prosecutorial misconduct. He maintains the state improperly elicited hearsay statements from a victim at trial. Mathis is precluded from relief on this claim because he failed to raise it on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3); *State v. Shrum*, 220 Ariz. 115, ¶ 12 (2009) (Rule 32.2(a) precludes relief on ground that could have been raised on direct appeal). Notwithstanding preclusion, the claim lacks merit. On appeal, Mathis argued that the court erred by admitting the victim’s hearsay statements over his objections. We concluded, however, that the statements were not hearsay because they were previous inconsistent statements and admissible under Rule 801(d)(1)(A), Ariz. R. Evid. Because we concluded the trial court did not err in admitting these statements, Mathis’s related contention of prosecutorial misconduct is unavailing. *Cf. State v. Romero*, ___ Ariz. ___, ¶ 35, 556 P.3d 305, 316 (App. 2024) (even assuming testimony was inadmissible, not prosecutorial error “merely because it involves evidence presented by a prosecutor”).

¶6 As to Mathis’s claim that the case detective perjured herself in the grand jury proceeding, the sole procedural vehicle for challenging grand jury proceedings is a motion under Rule 12.9, Ariz. R. Crim. P. *See State v. Young*, 149 Ariz. 580, 585-86 (App. 1986); *State v. Snelling*, 225 Ariz. 182, ¶ 11 (2010) (“A defendant alleging prosecutorial misconduct in a grand jury proceeding generally must seek relief from an adverse trial court ruling through special action . . .”). Mathis did not file such a motion here. And his claim that his indictment was based on perjured testimony could have been raised on appeal but was not. *See State v. Murray*, 184 Ariz. 9, 32 (1995). Accordingly, he is precluded from relief on this basis, and the trial court did not err in dismissing this claim. *See* Ariz. R. Crim. P. 32.2(a)(3).

¶7 Mathis also asserts the trial court erred in denying relief on his claim regarding the state’s failure to disclose that the case detective was on the *Brady* list. *See Yahweh v. City of Phoenix*, 243 Ariz. 21, n.1 (App. 2017) (“Prosecutors are required to disclose to criminal defendants police accused of professional misconduct, and a list of officers so defined is called a ‘Brady List.’”). Because he likewise failed to raise this argument on appeal, he is precluded from relief here. *See* Ariz. R. Crim. P. 32.2(a)(3). In any event, as the trial court noted, the investigation into the detective did not begin until

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February 2019, long after Mathis's trial. Thus, although the detective's underlying conduct had already occurred, she had not yet been accused of misconduct, and the state could not have failed to disclose that fact.

¶8 Mathis maintains the trial court erred by denying his claims of ineffective assistance of trial counsel. To prevail on such claims, Mathis 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)). We 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)). 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).

¶9 Mathis claims trial counsel was ineffective for failing to call several witnesses to testify in his defense and failing to hire an independent ballistic expert. We are required, however, to presume that counsel provided competent representation. *State v. Denz*, 232 Ariz. 441, ¶ 7 (App. 2013). Tactical decisions will not give rise to a claim of ineffective assistance unless counsel's decisions had no reasoned basis. *Id.* The deficiencies Mathis identifies are manifestly tactical in nature, including whether to call certain witnesses and the manner and extent of cross-examination. *See State v. Meeker*, 143 Ariz. 256, 260 (1984) ("The decision as to what witness should be called to testify on the defendant's behalf is a tactical, strategic decision."); *State v. McDaniel*, 136 Ariz. 188, 198 (1983) (manner of cross-examination is strategic). Because Mathis has not shown that counsel's decisions lacked a reasoned basis, we cannot say the trial court erred in dismissing his ineffective assistance of trial counsel claims. *See Ainsworth*, 250 Ariz. 457, ¶ 1.

¶10 We grant review but deny relief.