

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

AUG 31 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2010-0145-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
CLAYTON LEE HUGGINS,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR20050495

Honorable Robert Duber II, Judge

REVIEW GRANTED; RELIEF DENIED

Law Office of Emily Danies  
By Emily Danies

Tucson  
Attorney for Petitioner

ECKERSTROM, Judge.

¶1 After a jury trial, petitioner Clayton Huggins was convicted of first-degree murder and sentenced to life imprisonment with no possibility of parole for twenty-five years. We affirmed his conviction and sentence on appeal. *State v. Huggins*, No. 2 CA-CR 2006-0253 (memorandum decision filed Aug. 30, 2007). Huggins now seeks review

of the trial court's order denying post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., on his claim of ineffective assistance of trial counsel.

¶2 In a petition for post-conviction relief Huggins alleged his trial counsel had rendered ineffective assistance in dissuading Huggins from testifying at trial on his own behalf and in withdrawing a request for jury instructions on lesser-included offenses. The trial court held an evidentiary hearing at which Huggins and his trial counsel testified. The court then denied relief, stating,

The Court finds that submission to [the] jury without instructions on lesser included offenses was a tactical decision within the prerogative of defense counsel and that there were logical reasons for the decisions made. The Court does not find that counsel overbore [Huggins]'s will to testify at trial or that there was any misunderstanding [between Huggins and trial counsel].

This petition for review followed.

¶3 On review, Huggins argues the trial court "erred" in denying relief. In support of this claim he cites his own testimony at the evidentiary hearing and complains, "The Court believed the attorney's testimony over Mr. Huggins' when there was conflicting testimony as to whether conversations between lawyer and client had occurred." But it is the trial court's role to resolve such conflicts; just as we do not reweigh trial evidence on appeal, we do not reweigh evidence presented at a post-conviction evidentiary hearing, and we will not disturb a Rule 32 ruling that is based on substantial evidence. *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993); *see also State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court sole arbiter of witness credibility in post-conviction proceeding); *cf. State v. Lee*, 189 Ariz.

590, 603, 944 P.2d 1204, 1217 (1997) (reviewing court does not reweigh trial evidence on appeal).

¶4 We also view the evidence in the light most favorable to sustaining the trial court's ruling and resolve all reasonable inferences against the petitioner. *Sasak*, 178 Ariz. at 186, 871 P.2d at 733. A criminal defendant has a constitutional right to testify in his own defense, but to invoke this right he "must make his desire to testify known at trial and cannot allege [it] as an afterthought." *State v. Gulbrandson*, 184 Ariz. 46, 65, 906 P.2d 579, 598 (1995). According to trial counsel, he spoke at length with Huggins about the potential advantages and disadvantages of testifying, and "it was [Huggins's] decision not to testify." Notwithstanding Huggins's assertion that counsel had "intimidated" him, the court's resolution of conflicting testimony was supported by substantial evidence.

¶5 Huggins also challenges the trial court's determination that counsel's request to withdraw jury instructions on lesser included offenses was a reasoned tactical decision that did not give rise to a claim of ineffective assistance of counsel. *See State v. Nirschel*, 155 Ariz. 206, 208, 745 P.2d 953, 955 (1987) ("[D]isagreements in trial strategy will not support a claim of ineffective assistance of counsel, provided the challenged conduct has some reasoned basis."). According to Huggins, trial counsel provided no "good explanation" for his decision. But trial counsel testified that he had spoken with Huggins about the strategy of proceeding on a single charge in order to avoid a "compromise" guilty verdict on a lesser offense, as well as sentences that Huggins, a repeat offender, could face if convicted of second-degree murder. And, consistent with counsel's testimony, Huggins knew his attorney planned to argue that the

state's evidence of premeditation was insufficient to convict Huggins of first-degree murder. This evidence was sufficient for the court to conclude counsel had not rendered ineffective assistance with regard to requested jury instructions, but had made a reasoned tactical decision. Huggins's disagreement with that strategy, offered in hindsight, is insufficient to establish that counsel's performance "fell below the objective standards of representation measured by prevailing professional norms." *Id.*

¶6 Substantial evidence thus supported the trial court's findings, and we cannot say the court erred in concluding Huggins failed to establish his factual allegations by a preponderance of the evidence, as required by Rule 32.8(c). For the same reasons, Huggins has not established the court abused its discretion in denying post-conviction relief. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007) (decision to grant or deny Rule 32 relief reviewed for abuse of discretion). Accordingly, we grant the petition for review, but we deny relief.

/s/ Peter J. Eckerstrom  
PETER J. ECKERSTROM, Judge

CONCURRING:

/s/ Garye L. Vásquez  
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge