

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
MAR 11 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2008-0261-PR
)	DEPARTMENT B
v.)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
DANIEL LEE BAKER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20040488

Honorable Nanette M. Warner, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Jacob R. Lines

Tucson
Attorneys for Respondent

Daniel Lee Baker

Phoenix
In Propria Persona

B R A M M E R, Judge.

¶1 Petitioner Daniel Lee Baker was convicted after a jury trial of two counts of aggravated driving while under the influence of an intoxicant (DUI) and two counts of aggravated driving with an alcohol concentration of .08 or greater. We affirmed the convictions and the sentences imposed on appeal. *State v. Baker*, No. 2 CA-CR 2004-0352 (memorandum decision filed Sept. 27, 2006). Baker then sought post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. The trial court dismissed the petition, denying relief. We will not disturb the court's ruling absent an abuse of discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007).

¶2 After appointed counsel filed a notice in which he stated he had thoroughly reviewed the case and found no issues to raise, the trial court permitted Baker to file a pro se petition for post-conviction relief. In that petition, Baker raised the following claims, which he reasserts on review: the state failed to provide him with police logs, which violated its discovery obligation under Rule 15, Ariz. R. Crim. P., violated *Brady v. Maryland*, 373 U.S. 83 (1963), and amounted to prosecutorial misconduct; counsel was ineffective in connection with the *Brady* and disclosure issue; he was denied his constitutional right to be examined to determine his competency to stand trial, and trial counsel was ineffective because he did not seek an evaluation of Baker's competency pursuant to Rule 11, Ariz. R. Crim. P.; and his due process rights have been violated because, among other things, the Arizona Department of Corrections (ADOC) has deprived him of access to his legal records and to legal materials.

¶3 The trial court denied relief in a minute entry that clearly identified Baker's claims and correctly ruled on those claims in a manner that has permitted this court to understand the basis for the court's resolution of the issues; no purpose would be served by rehashing the court's thorough, well-reasoned order in any detail here. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Briefly, however, with respect to most of Baker's claims, the court correctly found Baker precluded from obtaining relief based either on claims he failed to raise previously or claims he did raise, which had been adjudicated on appeal. *See Ariz. R. Crim. P. 32.2(a)(2), (3)*.

¶4 On appeal, counsel had filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967); *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969); and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Although counsel found no issues to raise, among the arguments Baker asserted in his pro se supplemental brief was that he had been denied his right to a competency examination. The trial court correctly found this claim precluded and rejected the related claim of ineffective assistance of counsel.¹ *See Ariz. R. Crim. P. 32.2(a)(2)*. Baker has not persuaded us the trial court abused its discretion by denying relief on these claims. We stated in our memorandum decision that Baker had failed to cite any evidence in the record to establish that either the trial court or trial counsel should have questioned his competency. *Baker*, No. 2 CA-CR 2004-0352, ¶ 7. And he has not shown

¹Although the minute entry is somewhat ambiguous and suggests what the court found precluded was the claim of ineffective assistance, when viewed in context, we believe the court found the underlying claim precluded.

the trial court abused its discretion in this proceeding by concluding the record did not demonstrate, and Baker had not otherwise established, that counsel had performed deficiently by failing to request a competency hearing pursuant to Rule 11. *See Strickland v. Washington*, 466 U.S. 668, 693-94 (1984) (defendant not entitled to relief based on claim of ineffective assistance unless he establishes counsel's performance unreasonable under circumstances of case and shows reasonable probability outcome would have been different but for unprofessional errors).

¶5 The trial court also was correct that Baker could have raised on appeal the claims related to the state's purported disclosure violation, thereby waiving those claims when he failed to do so. *See Ariz. R. Crim. P. 32.2(a)(3)*. Moreover, the court addressed the claims on the merits, and Baker has not shown the court erred. Finally, the court correctly determined that Baker's assertions relating to ADOC's alleged violation of his rights are not cognizable under Rule 32.1.

¶6 We grant Baker's petition for review, but for the reasons stated, we deny relief.

J. WILLIAM BRAMMER, JR., Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

JOSEPH W. HOWARD, Judge