

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 28 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0036-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
DANIEL JAMES REDDINGTON,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MOHAVE COUNTY

Cause No. 20060292

Honorable Steven F. Conn, Judge

REVIEW GRANTED; RELIEF DENIED

Matthew J. Smith, Mohave County Attorney
By Jeremy L. Huss

Kingman
Attorneys for Respondent

Jill Evans, Mohave County Appellate Defender
By Diane S. McCoy

Kingman
Attorneys for Petitioner

M I L L E R, Judge.

¶1 Petitioner Daniel Reddington seeks review of the trial court’s order denying his petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., in which he raised various claims of ineffective assistance of counsel. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Reddington has not sustained his burden of establishing such abuse here.

¶2 After a jury trial held in his absence, Reddington was convicted of aggravated assault after he hit a man several times with a flashlight. After Reddington was returned to custody, the trial court imposed a mitigated, six-year term of imprisonment. His conviction and sentence were affirmed on appeal. *State v. Reddington*, No. 1 CA-CR 08-0301 (memorandum decision filed Dec. 17, 2009). Reddington thereafter initiated a proceeding for post-conviction relief, arguing in his petition that trial counsel had been ineffective in failing to (1) convey plea offers to him, (2) investigate the case adequately, (3) notify him of “court dates and developments in the case,” (4) call a witness to testify that his fingerprints were not found on the flashlight, and (5) object to “lay opinion testimony.” The trial court granted Reddington an evidentiary hearing, after which it denied relief in an exhaustive, twenty-page ruling.

¶3 On review, Reddington maintains the trial court erred in concluding trial counsel’s performance had not been deficient. It is the defendant’s burden to prove by a preponderance of the evidence all factual allegations raised in his petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.8(c). In reviewing a trial court’s ruling after an evidentiary hearing, we defer to that court’s assessment of the witnesses’ credibility

and resolution of any conflicts in the evidence. *See State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988). We are mindful that the trial court ““is in the best position to evaluate credibility and accuracy, as well as draw inferences [from], weigh, and balance”” the evidence presented at the evidentiary hearing. *See State v. Hoskins*, 199 Ariz. 127, ¶ 97, 14 P.3d 997, 1019 (2000), *quoting State v. Bible*, 175 Ariz. 549, 609, 858 P.2d 1152, 1212 (1993). Consequently, we do not reweigh the evidence. *See State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993) (appellate court reviews evidence at post-conviction-relief hearing favorable to trial court’s ruling and defers to trial court in resolving conflicts in evidence). Rather, “[w]e examine a trial court’s findings of fact after an evidentiary hearing to determine if they are clearly erroneous.” *State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994).

¶4 In the context of addressing voluntary absences from trial, this court has noted an out-of-custody defendant’s duty to maintain contact with his or her attorney and to appear in court. *See State v. Muniz–Caudillo*, 185 Ariz. 261, 262, 914 P.2d 1353, 1354 (App. 1996). As was determined in his appeal and by the trial court at the Rule 32 hearing, Reddington failed to maintain contact with his attorney. In view of that failure and the evidence presented at the evidentiary hearing, we cannot say the court abused its discretion in denying Reddington relief. Reddington’s arguments on review amount to a request to reweigh the conflicting evidence presented at the hearing, which we will not do. *Sasak*, 178 Ariz. at 186, 871 P.2d at 733. Because the court resolved Reddington’s claims correctly and in a manner permitting this court to review and determine the propriety of its thorough order, no purpose would be served by restating its rulings in

their entirety, and we adopt them. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Therefore, although we grant review, relief is denied.

/s/ Michael Miller

MICHAEL MILLER, Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge