

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

TONY MICHAEL CARPINO,
Petitioner.

No. 2 CA-CR 2013-0392-PR
Filed December 12, 2013

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Maricopa County

No. CR2011102465001DT

The Honorable Kristin Hoffman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Diane Meloche, Deputy County Attorney, Phoenix
Counsel for Respondent

Bruce Peterson, Maricopa County Legal Advocate
By Consuelo M. Ohanesian, Deputy Legal Advocate, Phoenix
Counsel for Petitioner

STATE v. CARPINO
Decision of the Court

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

M I L L E R, Judge:

¶1 Tony Carpino petitions this court for review of the trial court's order summarily dismissing his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Carpino has not met his burden of demonstrating such abuse here.

¶2 Carpino pled guilty to second-degree burglary and misconduct involving weapons and was sentenced to an eight-year prison term for burglary, to be followed by a three-year probation term for weapons misconduct. Carpino filed a notice and petition for post-conviction relief, arguing in his petition that "the factual basis of [his] plea was unconstitutional" based on *United States v. Jones*, ___ U.S. ___, 132 S. Ct. 945 (2012), because law enforcement had placed a Global Positioning System (GPS) device on his vehicle without a warrant, thus violating his Fourth Amendment rights. He additionally claimed that his trial counsel had been ineffective in failing to investigate the GPS issue or advise him about the prospects of seeking to suppress the related evidence, and that he would not have entered the plea had he been aware of that course of action.

¶3 The trial court summarily denied relief. It determined Carpino's first claim was precluded because he had waived any Fourth Amendment challenge to the evidence against him by pleading guilty. *See* Ariz. R. Crim. P. 32.2(a)(3). It also rejected Carpino's claim of ineffective assistance of counsel. The court concluded counsel had not been deficient in not advising Carpino

STATE v. CARPINO
Decision of the Court

about a motion to suppress the GPS evidence because he had entered his plea more than six months before *Jones* was decided and counsel could not have been expected “to anticipate the future ruling of the United States Supreme Court,” particularly when “[t]he great weight of authority” prior to *Jones* would not have supported a motion to suppress.

¶4 On review, Carpino reurges his claims without addressing the bases for the trial court’s ruling. He ignores the court’s determination that he waived his Fourth Amendment claim by pleading guilty and, beyond insisting that the Court in *Jones* “did not rewrite the Fourth Amendment,” fails to address the court’s determination that counsel had no reason to advise Carpino that he had a viable Fourth Amendment claim. Notably, he identifies no authority existing before *Jones* suggesting that the warrantless placement of a GPS tracking device on a vehicle violates the Fourth Amendment. He certainly has not identified any authority suggesting trial counsel fell below prevailing professional norms by failing to raise such a claim. See *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006) (colorable claim of ineffective assistance of counsel requires showing “both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant”), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

¶5 We have reviewed the record and conclude the trial court correctly rejected Carpino’s claims in a thorough and well-reasoned minute entry; we therefore adopt the court’s ruling. See *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶6 Although review is granted, relief is denied.