

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

FRANK BALLESTEROS JR.,
Petitioner.

No. 2 CA-CR 2014-0091-PR
Filed December 16, 2014

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NOT FOR PUBLICATION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 Pima County

No. CR20103241001

The Honorable Teresa Godoy, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Respondent

Frank Ballesteros Jr., Florence
In Propria Persona

STATE v. BALLESTEROS
Decision of the Court

MEMORANDUM DECISION

Chief Judge Eckerstrom authored the decision of the Court, in which Presiding Judge Miller and Judge Espinosa concurred.

ECKERSTROM, Chief Judge:

¶1 Frank Ballesteros Jr. seeks review of the trial court's order denying his 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. *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Ballesteros has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Ballesteros was convicted of aggravated assault and sentenced to an 11.25-year prison term. We affirmed his conviction and sentence on appeal. *State v. Ballesteros*, No. 2 CA-CR 2011-0161 (memorandum decision filed Feb. 16, 2012). Ballesteros sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no colorable claims to raise in post-conviction proceedings.

¶3 Ballesteros then filed a pro se petition claiming his trial counsel had been ineffective because she "took the side of" the victim and "made all 'tactical' decisions . . . with the best interests of [the victim] at the fore." Specifically, Ballesteros claimed counsel failed to investigate the victim's alleged criminal history, failed to adequately cross-examine her, and failed to call certain witnesses in his defense. After an evidentiary hearing, the trial court denied relief, concluding "trial counsel had a tactical reason and a strategic purpose for her decisions."

¶4 On review, Ballesteros first focuses on delays in his receipt of transcripts from the evidentiary hearing on his petition for post-conviction relief. He claims the "delay has caused a structural defect" in his post-conviction proceedings. However, he

STATE v. BALLESTEROS
Decision of the Court

acknowledges that he has received those transcripts and does not explain what relief he believes he is entitled to as a result of the delay. And we have accepted his petition for review as timely filed. We therefore need not further address Ballesteros's argument concerning the delay in receiving transcripts.

¶5 Ballesteros next repeats his claim of ineffective assistance of counsel. But he does not meaningfully address the trial court's conclusion that counsel's decisions were based on reasoned tactical considerations and therefore could not support a claim of ineffective assistance of counsel. *See State v. Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d 98, 101 (App. 2013) (disagreements about trial strategy cannot support claim of ineffective assistance if "challenged conduct ha[d] some reasoned basis"), *quoting State v. Gerlaugh*, 144 Ariz. 449, 455, 698 P.2d 694, 700 (1985); *see also Strickland v. Washington*, 466 U.S. 668, 687-88 (1984) (to demonstrate ineffective assistance of counsel, defendant must show counsel fell below prevailing professional norms and thereby prejudiced defendant); *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993) ("In reviewing a decision on a hearing for post-conviction relief, we must view the facts in the light most favorable to sustaining the lower court's ruling, and we must resolve all reasonable inferences against the defendant."). Ballesteros therefore has not met his burden of demonstrating the court abused its discretion in rejecting his ineffective assistance claim. And we decline his request that we "review the entire record" for error; he is not entitled to further review. *State v. Smith*, 184 Ariz. 456, 459, 910 P.2d 1, 4 (1996); *see also* Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review must include "issues which were decided by the trial court and which the defendant wishes to present to the appellate court for review").

¶6 Although we grant review, we deny relief.