

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CHARLES STRANGE,
Petitioner.

No. 2 CA-CR 2014-0291-PR
Filed November 28, 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NOT FOR PUBLICATION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 Pinal County

No. S1100CR14895

The Honorable Craig A. Raymond, Judge

REVIEW GRANTED; RELIEF GRANTED

COUNSEL

M. Lando Voyles, Pinal County Attorney
By Richard M. Wintory, Chief Deputy County Attorney, Florence
Counsel for Respondent

Charles Strange, Florence
In Propria Persona

STATE v. STRANGE
Decision of the Court

MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Charles Strange seeks review of the trial court's ruling dismissing as untimely his petition for post-conviction DNA¹ testing pursuant to A.R.S. § 13-4240. We grant review and relief.

¶2 After a jury trial, Strange was convicted of two counts of sexual assault, two counts of second-degree burglary, and four counts of attempted sexual assault. He was sentenced to a combination of concurrent and consecutive prison terms totaling ninety-six years. In July 2014, he filed a petition pursuant to § 13-4240 seeking DNA testing of numerous items of evidence. The trial court dismissed the petition as untimely. This petition for review followed.

¶3 As Strange correctly points out, a convicted person may file a petition seeking DNA testing "at any time." § 13-4240(A). Thus, the trial court's dismissal of his petition as "untimely" was error. The state urges us to nonetheless deny relief because Strange's petition presents no basis for relief, there is insufficient remaining DNA to test, and because he cannot demonstrate he is entitled to testing in any event. Although the state may be correct, those arguments have never been presented to the trial court and rely, at least in part, on factual assertions that must first be evaluated by that court. And, while the state suggests Strange is barred from relief because he has previously requested DNA testing, it cites no authority to support this argument and does not develop it in any meaningful way. It therefore has waived the argument on review.

¹Deoxyribonucleic acid.

STATE v. STRANGE
Decision of the Court

See State v. Bolton, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995)
(insufficient argument waives claim on review).

¶4 We grant relief and remand the case to the trial court for further proceedings consistent with this decision.