

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

WILLIAM MICHAEL JACKSON,  
*Petitioner.*

No. 2 CA-CR 2014-0335-PR  
Filed December 26, 2014

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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NOT FOR PUBLICATION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.

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Petition for Review from the Superior Court in Pima County

No. CR20070250

The Honorable Teresa Godoy, Judge Pro Tempore

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Daniel R. Raynak, Phoenix  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

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

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M I L L E R, Presiding Judge:

¶1 William Jackson seeks review of the trial court's orders denying his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., as well as the denial of his subsequent motion for reconsideration. 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). Jackson has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Jackson was convicted of continuous sexual abuse of a child, sexual conduct with a minor under the age of fifteen, child molestation, and two counts of sexual conduct with a minor. He was sentenced to a combination of consecutive and concurrent prison terms totaling thirty-six years. We affirmed his convictions on appeal, and affirmed his sentences as modified to account for presentence incarceration credit. *State v. Jackson*, No. 2 CA-CR 2011-0027 (memorandum decision filed Mar. 12, 2012).

¶3 Jackson sought post-conviction relief, arguing his trial counsel had been ineffective by failing to: (1) object on hearsay grounds to the admission of a video recording; (2) move for a mistrial, move to strike, or ask for a curative instruction when a witness mentioned precluded evidence; (3) challenge the constitutionality of the evidentiary standard for admission of a victim's prior sexual conduct pursuant to A.R.S. § 13-1421; and (4) adequately challenge or rebut testimony by the state's expert witnesses. He further asserted counsel had inadequately prepared for trial, listing several examples he claimed illustrated counsel's lack of preparedness.

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¶4 Before the trial court ruled, Jackson requested that the court “extend time” for its decision on his Rule 32 petition. He stated that he wished to interview a potential expert witness that trial counsel purportedly had interviewed before trial but had not called to testify. The court did not rule on that motion, instead issuing an order summarily denying Jackson’s claims.

¶5 Jackson moved for reconsideration, further explaining his reasons for contacting the potential expert witness. He asserted he had been told by counsel during trial preparation that counsel had contacted the witness, but that the witness now had no record of counsel having done so. He further asserted the witness was willing to review the file and “continue[d] to be a probable defense witness” to rebut testimony by one of the state’s expert witnesses. He therefore requested the court stay the proceedings to consider the motion to extend.

¶6 The court stated it had not received the motion to extend “because [it] was not in the distribution” and had first become aware of the motion when it received Jackson’s motion for reconsideration. The court nonetheless denied the motion for reconsideration, noting that in rejecting Jackson’s claim of ineffective assistance it had concluded trial counsel “is not required to present expert rebuttal testimony in order to be found competent” and, in any event, counsel had filed a motion to preclude and made a tactical decision to cover the same criticisms as would have been possible with a rebuttal expert. This petition for review followed.

¶7 On review, Jackson asserts the trial court erred by summarily rejecting his claims and by failing to grant him additional time to supplement the record regarding the expert witness, rule on his motion to extend, and “consider” his motion for reconsideration. We first address Jackson’s claims regarding the motion to extend and motion for reconsideration. As we noted above, the court determined that evidence concerning the witness’s potential testimony would not change its ruling because counsel was not ineffective for failing to procure a rebuttal witness. Thus, the court determined it was not necessary to allow Jackson to further interview or to retain the expert. Jackson argues the court’s finding

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“had no basis in fact” because the court did not know what the witness “was prepared to say.” This argument ignores the court’s determination that Jackson was not prejudiced by the absence of a rebuttal expert. *See 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). Moreover, Jackson provided no evidence establishing what his proposed rebuttal expert would have testified about. *Cf. Ariz. R. Crim. P. 32.6(d)* (amendment to pleading not permitted absent showing of good cause); *Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d at 948.

¶8 Jackson similarly identifies no error in the trial court’s summary rejection of his other claims, instead asserting without elaboration that they are colorable. “To state a colorable claim of ineffective assistance of counsel,” Jackson was required to “show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced [him].” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006), *citing Strickland*, 466 U.S. at 687. Most notably, Jackson fails to address the court’s conclusion that the bulk of the conduct forming the basis for his claims constituted reasoned, tactical decisions by counsel and that Jackson had not demonstrated that conduct fell below prevailing professional norms. *See State v. Denz*, 232 Ariz. 441, ¶ 7, 306 P.3d 98, 101 (App. 2013) (reviewing court presumes “‘counsel’s conduct falls within the wide range of reasonable professional assistance’ that ‘might be considered sound trial strategy’”), *quoting Strickland*, 466 U.S. at 689; *see also State v. Meeker*, 143 Ariz. 256, 260, 693 P.2d 911, 915 (1984) (“Disagreements as to trial strategy . . . will not support a claim of ineffective assistance of counsel as long as the challenged conduct could have some reasoned basis.”).

¶9 And, to the extent Jackson incorporates by reference the arguments made in his petition below, nothing in our rules permits him to do so. *See Ariz. R. Crim. P. 32.5, 32.9(c)*; *State v. Bortz*, 169 Ariz. 575, 578, 821 P.2d 236, 239 (App. 1991). Jackson has not met his burden of showing the court abused its discretion in summarily rejecting his claims of ineffective assistance.

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¶10 Although we grant review, we deny relief.