

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

CAMARO SUE REISEWITZ,  
*Petitioner.*

No. 2 CA-CR 2014-0383-PR  
Filed January 6, 2015

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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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

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Petition for Review from the Superior Court in Mohave County

No. CR200900362

The Honorable Steven F. Conn, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Matthew J. Smith, Mohave County Attorney  
By Gregory A. McPhillips, Deputy County Attorney, Kingman  
*Counsel for Respondent*

The Brewer Law Office, Show Low  
By Benjamin M. Brewer  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

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

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ESPINOSA, Judge:

¶1 Petitioner Camaro Reisewitz seeks review of the trial court's order denying her petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. "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). Reisewitz has not sustained her burden of establishing such abuse here.

¶2 After a jury trial, Reisewitz was convicted of possession of dangerous drugs for sale, possession of drug paraphernalia, and two counts of child abuse. The trial court imposed mitigated, concurrent sentences, the longest of which was eight years. Her convictions and sentences were affirmed on appeal. *State v. Reisewitz*, No. 1 CA-CR 10-0290 (memorandum decision filed Apr. 21, 2011).

¶3 Reisewitz thereafter initiated a proceeding for post-conviction relief, arguing in her petition that she had received ineffective assistance of counsel based on counsel's failure to move to sever Reisewitz's case from that of her husband, to seek suppression of evidence "based upon illegal arrest," or to seek suppression of evidence "because the initial consent to search the home was not voluntarily given." The trial court determined Reisewitz had stated a colorable claim of ineffective assistance as to counsel's failure to move to sever and set an evidentiary hearing, summarily dismissing the remaining claims. After the hearing, the court denied relief, concluding counsel had made a tactical decision not to seek to sever the cases and Reisewitz had not established that

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such a decision was unreasonable or otherwise constituted deficient performance.

¶4 On review, Reisewitz argues the court abused its discretion in summarily denying relief on her claims relating to counsel's failure to seek suppression on the grounds of illegal arrest or involuntary consent and in denying relief after the hearing on the remaining claim.<sup>1</sup> We first address those claims the trial court concluded were not colorable.

¶5 "To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); *see also Strickland v. Washington*, 466 U.S. 668, 687 (1984). To show prejudice, a defendant must show that there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

¶6 In this case, trial counsel filed a pretrial motion to suppress all "evidence derived from the unconstitutional search" of Reisewitz's home on the ground that law enforcement officers lacked probable cause to believe they would find drug-related items in the home. Reisewitz contends counsel should have moved to suppress based on the officers who undertook the search of her home having placed her in handcuffs and kept her in a chair. She maintains counsel should have argued this constituted an illegal arrest, requiring suppression of any evidence seized as a result. She also asserts that counsel should have sought suppression based on purportedly conflicting accounts about the events relating to her

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<sup>1</sup>We note the state's response on review fails to comply with Rule 32.9(c)(2), which requires observance of the provisions of Rule 32.9(c)(1) and does not allow mere reference to pleadings below. *See State v. Bortz*, 169 Ariz. 575, 577, 821 P.2d 236, 238 (App. 1991) (incorporating papers filed in trial court by reference inappropriate).

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consent to search her home, which she claims made her consent involuntary.

¶7 “Proof of ineffectiveness must be a demonstrable reality rather than a matter of speculation.” *State v. Meeker*, 143 Ariz. 256, 264, 693 P.2d 911, 919 (1984). There is “[a] strong presumption” that counsel “provided effective assistance,” *State v. Febles*, 210 Ariz. 589, ¶ 20, 115 P.3d 629, 636 (App. 2005), which the defendant must overcome by providing evidence that counsel’s conduct did not comport with prevailing professional norms, *see State v. Herrera*, 183 Ariz. 642, 647, 905 P.2d 1377, 1382 (App. 1995). Moreover, tactical or strategic decisions rest with counsel, *State v. Lee*, 142 Ariz. 210, 215, 689 P.2d 153, 158 (1984), and we will presume “that the challenged action was sound trial strategy under the circumstances,” *State v. Stone*, 151 Ariz. 455, 461, 728 P.2d 674, 680 (App. 1986). Thus, “[d]isagreements as to trial strategy or errors in trial [tactics] will not support a claim of ineffective assistance of counsel as long as the challenged conduct could have some reasoned basis.” *Meeker*, 143 Ariz. at 260, 693 P.2d at 915.

¶8 Reisewitz has not shown that counsel’s decision to seek suppression on one ground instead of others was anything other than a tactical decision. Nor has she provided affidavits or other evidence in the trial court suggesting counsel’s failure to pursue one theory for suppression over other possible arguments fell below prevailing professional norms. *See State v. Donald*, 198 Ariz. 406, ¶ 21, 10 P.3d 1193, 1201 (App. 2000) (to warrant evidentiary hearing, Rule 32 claim “must consist of more than conclusory assertions”). Furthermore, as the court pointed out, in view of the ruling the court made on the suppression motion filed, in which it concluded there was probable cause for a search and the officers serving the warrant had acted in good faith, Reisewitz has failed to show prejudice arising from counsel’s failure to raise her alternative grounds for suppression. We therefore cannot say the court abused its discretion in concluding she failed to state a colorable claim of ineffective assistance in relation to the motion to suppress.

¶9 We also reject Reisewitz’s claim that the trial court abused its discretion in rejecting her claim of ineffective assistance of

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counsel based on counsel's decision not to seek severance. After an evidentiary hearing, our review of the court's factual findings "is limited to a determination of whether those findings are clearly erroneous"; we "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." *State v. Sasak*, 178 Ariz. 182, 186, 871 P.2d 729, 733 (App. 1993). When "the trial court's ruling is based on substantial evidence, this court will affirm." *Id.* And, "[e]vidence is not insubstantial merely because testimony is conflicting or reasonable persons may draw different conclusions from the evidence." *Id.*; see also *State v. Fritz*, 157 Ariz. 139, 141, 755 P.2d 444, 446 (App. 1988) (trial court's purview to determine witness credibility in post-conviction proceeding).

¶10 Reisewitz had the burden of proving her factual allegations by a preponderance of the evidence. See Ariz. R. Crim. P. 32.8(c). And, the trial court was "the sole arbit[er] of the credibility of witnesses" at the evidentiary hearing. *Fritz*, 157 Ariz. at 141, 755 P.2d at 446; see also *Sasak*, 178 Ariz. at 186, 871 P.2d at 733 ("It is the duty of the trial court to resolve any conflicts in the evidence."). The court's ruling that counsel had made a tactical decision was supported by evidence presented at the hearing, including extensive testimony by trial counsel about why he had decided not to seek severance. We cannot say the court abused its discretion in determining based on that evidence that counsel's tactical decision had a reasoned basis and that his performance was not deficient. See *Meeker*, 143 Ariz. at 260, 693 P.2d at 915.

¶11 For these reasons, although the petition for review is granted, relief is denied.