

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

ANGELO RAPHAEL REA,
Petitioner.

No. 2 CA-CR 2016-0068-PR
Filed April 20, 2016

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Maricopa County
No. CR2010161566001DT
The Honorable Robert E. Miles, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

William G. Montgomery, Maricopa County Attorney
By Arthur Hazelton, Deputy County Attorney, Phoenix
Counsel for Respondent

Angelo R. Rea, Safford
In Propria Persona

STATE v. REA
Decision of the Court

MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Petitioner Angelo Rea 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 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). Rea has not sustained his burden of establishing such abuse here.

¶2 After a jury trial in absentia, Rea was convicted of possession of dangerous drugs and possession of drug paraphernalia. The trial court sentenced him to enhanced, minimum, concurrent prison terms, the longer of which was eight years. Rea’s convictions and sentences were affirmed on appeal. *State v. Rea*, No. 1 CA-CR 11-0905, ¶ 12 (memorandum decision filed Sept. 27, 2012).

¶3 Rea initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was “unable to find any colorable claims for relief to raise” in a Rule 32 proceeding. In a pro se, supplemental petition, however, Rea argued he had received ineffective assistance of trial counsel based on counsel’s failure to object to evidence Rea contends was “obtained pursuant [to] an unlawful[] arrest” and “an unconstitutional search [and] seizure.” He also argued counsel was ineffective because she had filed a motion to suppress evidence that had not been “logged into evidence” and had not “interviewed [him] prior to trial.” The trial court summarily denied relief.

STATE v. REA
Decision of the Court

¶4 On review Rea again argues evidence at his trial was obtained unlawfully and counsel was ineffective in failing to object; he contends the trial court erred in summarily denying his petition. Generally, “[t]o 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).

¶5 Furthermore, there is “[a] strong presumption” that counsel “provided effective assistance,” see *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.” *State v. Meeker*, 143 Ariz. 256, 260, 693 P.2d 911, 915 (1984).

¶6 In this case, the state extended a plea offer to Rea and, after it had expired, extended the time for him to consider it. The plea apparently would have provided for a 2.5-year sentence rather than the six to fifteen years which Rea was facing. As the prosecutor explained this to the trial court, Rea’s trial counsel stated she had spoken with Rea about a motion to suppress. Counsel stated she had explained she was “happy to file it” but that Rea might “not get a plea offer at all” if the motion was filed. After that conversation, she indicated she had attempted to contact him “multiple times” and sent a letter to his last known address, but had not heard from him. Rea indicated he was seeking new counsel, and the court indicated it would consider a motion for new counsel if filed, and set a hearing for two days later.

STATE v. REA
Decision of the Court

¶7 At the hearing, Rea explained that he had “wanted a motion to suppress filed.” He said counsel hadn’t “press[ed]” him for anything, but stated she had “called . . . three times.” Counsel explained that although the prosecutor had not specifically told her he would withdraw Rea’s plea offer if a motion were made, she had been concerned about that, as she described it as a “very common practice.” She stated Rea “had a decent plea offer . . . available to him” and she “didn’t want him to lose the benefit of that.” She also indicated she had considered the merits of the motion and agreed that “played into [her] decision . . . to enter one.” The prosecutor agreed that filing a motion to suppress would have been an issue in regard to the plea offer, and noted that he had extended the time on the plea offer “only as a favor to [defense counsel] because she made such extraordinary efforts to find out what was going on with” Rea. He indicated Rea had not been in contact with counsel for “the last two months” and, at that point, trial was set for five days later, too late to file a motion to suppress. *See* Ariz. R. Crim. P. 16.1(b)-(c).

¶8 In view of these facts, we cannot say Rea has established that counsel’s decisions were not tactical, “but, rather, revealed ineptitude, inexperience or lack of preparation.” *State v. Goswick*, 142 Ariz. 582, 586, 691 P.2d 673, 677 (1984). Rather, as detailed above, the record before us shows that Rea himself was largely to blame for the failure to file the motion to suppress in that he did not maintain contact with his attorney. The record suggests counsel made a tactical decision, in view of her lack of contact with Rea, to preserve a possible plea agreement; Rea has provided no evidence to support a contrary conclusion. “Matters of trial strategy and tactics are committed to defense counsel’s judgment” and cannot serve as the basis for a claim of ineffective assistance of counsel. *State v. Beaty*, 158 Ariz. 232, 250, 762 P.2d 519, 537 (1988). We cannot say the trial court abused its discretion in rejecting his claim of ineffective assistance.

¶9 Although we grant the petition for review, we deny relief.