

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

CODY JAMES MARTINEZ,
Petitioner,

v.

HON. HOWARD J. FELL,
JUDGE PRO TEMPORE OF THE SUPERIOR COURT
OF THE STATE OF ARIZONA,
IN AND FOR THE COUNTY OF PIMA,
Respondent,

and

STATE OF ARIZONA,
Real Party in Interest.

No. 2 CA-SA 2016-0002
Filed February 22, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED FOR PERSUASIVE AUTHORITY.

See Ariz. R. Sup. Ct. 111(a)(3), (c);
Ariz. R. Crim. P. 31.17(b), (e); Ariz. R. Crim. P. 31.24;
Ariz. R. P. Spec. Actions 7(g), (i).

Special Action Proceeding
Pima County Cause No. CR20031993

JURISDICTION ACCEPTED; RELIEF DENIED

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COUNSEL

Law Offices of Williamson & Young, P.C., Tucson
By S. Jonathan Young

and

The Carrillo Law Firm, PLLC, Tucson
By Erin M. Carrillo
Counsel for Petitioner

Mark Brnovich, Arizona Attorney General
By Lacey Stover Gard, Chief Counsel
Capital Litigation Section, Tucson
Counsel for Real Party in Interest

DECISION ORDER

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 Cody Martinez seeks special action relief from the respondent judge's order, entered during Rule 32 proceedings, instructing him to disclose to the state "all e-mails [contained in trial counsel's file] that refer or remotely refer to any kind of ineffective assistance of counsel claim." Claims related to attorney-client privilege are appropriate for special action review; therefore, we accept jurisdiction. *See Green v. Nygaard*, 213 Ariz. 460, ¶ 6, 143 P.3d 393, 395 (App. 2006). Because the respondent had authority to order disclosure in these circumstances, we deny relief.

¶2 By claiming trial counsel was ineffective, Martinez has waived the attorney-client privilege as to any information related to his specific claim. *State v. Cuffle*, 171 Ariz. 49, 52-53, 828 P.2d 773,

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775-76 (1992) (“A defendant will not be allowed to use the attorney-client privilege as a shield to block inquiry into an issue that he has raised.”). Notwithstanding this waiver, Martinez argues the respondent judge had no authority to order disclosure of information contained in the trial file, relying on *Waitkus v. Mauet*, 157 Ariz. 339, 757 P.2d 615 (App. 1988). In *Waitkus*, this court determined there is “no basis for ordering the production of an attorney’s case files” because there was no “statutory or case authority to support it,” and that, “[a]t most, case law would permit the questioning of the attorney at an evidentiary hearing.” *Id.* at 340-41, 757 P.2d at 616-17. Our supreme court has since clarified, however, that a trial court has “inherent authority to grant discovery requests in [post-conviction relief] proceedings upon a showing of good cause.” *Canion v. Cole*, 210 Ariz. 598, ¶ 10, 115 P.3d 1261, 1263 (2005). In any event, *Waitkus* is factually distinguishable; there, unlike here, the trial court ordered disclosure of the entire file without regard to the nature of the “specific claims of the petitioner.” 157 Ariz. at 340, 757 P.2d at 616.

¶3 And we reject Martinez’s argument that *Canion* does not apply. Although Martinez correctly points out that the court in *Canion* observed that Rule 15, Ariz. R. Crim. P., does not govern disclosure in post-conviction proceedings, *see* 210 Ariz. 598, ¶ 9, 115 P.3d at 1262, he does not explain how that limits a trial court’s inherent authority to order disclosure. Martinez further suggests *Canion* is limited to claims grounded in *Brady v. Maryland*, 373 U.S. 83 (1963). But, again, the court in *Canion* did not base its determination on the state’s obligation to disclose exculpatory information, but instead on the trial court’s inherent authority to order disclosure. *See* 210 Ariz. 598, ¶ 10, 115 P.3d at 1263. Finally, we reject Martinez’s argument that allowing disclosure violates the supreme court’s rulemaking authority. *See generally* Ariz. Const. art. VI, § 5(5) (supreme court has “[p]ower to make rules relative to all procedural matters in any court”). Merely because our supreme court has not generated rules governing a trial court’s inherent authority does not mean the court cannot exercise it.

¶4 We accept special action jurisdiction but deny relief.