

SUPREME COURT OF ARIZONA

MURRAY HOOPER,) Arizona Supreme Court
) No. CV-22-0259-SA
 Petitioner,)
) Maricopa County
 v.) Superior Court
) No. CR-0000-121686
 THE HONORABLE JENNIFER GREEN,)
 JUDGE OF THE SUPERIOR COURT OF) United States Court of
 THE STATE OF ARIZONA in and for) Appeals, Ninth Circuit
 the County of Maricopa,) No. 08-99024
)
 Respondent Judge,) United States District
) Court
 STATE OF ARIZONA,) No. CV-98-02164-PHX-SMM
)
 Real Party in Interest.) **FILED: 11/10/2022**
)
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DECISION ORDER

Per Curiam

On September 22, 2022, Petitioner Murray Hooper filed a Motion for Post-Conviction DNA and Advanced Forensic Testing with the Maricopa County Superior Court. Petitioner asked the superior court to order testing of fingerprint evidence "lifted from the crime scene" pursuant to A.R.S. § 13-4241(A)(2). Motion at 7-9. Petitioner also requested that the superior court order DNA ("deoxyribonucleic acid") testing of the "bloodied kitchen knife" pursuant to both the mandatory testing provisions set forth in A.R.S. § 13-4240(B) and the discretionary testing provisions permitted by A.R.S. § 13-4240(C). Motion at 9-12.

After reviewing the facts and evidence presented at trial, making specific factual findings, and "agree[ing] with the Ninth Circuit that the totality of the evidence [showing Hooper's guilt] in this case 'is overwhelming,'" the superior court found that "no 'reasonable probability exists that [Petitioner] would not have been prosecuted or convicted if exculpatory results had been obtained through the new forensic testing,'" and therefore, denied Petitioner's motion for advanced testing of the fingerprint evidence.

Next, based on the court's analysis that parallels its analysis of Petitioner's request for fingerprint testing pursuant to A.R.S. § 13-4241(A)(2), the superior court found that "evidence of another person's DNA on the knife-[exculpatory evidence]-would not create. . . 'a reasonable probability that [Petitioner] would not

have been prosecuted or convicted. . ." and therefore, the court held it "cannot grant [Petitioner's] motion for DNA testing under [§ 13-4240(B)]" and denied the motion.

Based on its analysis being "identical to the analysis of Petitioner's request for fingerprint testing pursuant to A.R.S. § 13-4241(A)(2) and the request for DNA testing under A.R.S. § 13-4240(B)," the superior court held it "cannot find that the petitioner's verdict or sentence would have been more favorable." Specifically, the court held that it "cannot find the verdict or the sentence 'would have been more favorable' in light of so much evidence against [Petitioner], coupled with a reasonable explanation about why another person's DNA may have been on the knife."

Further, the court held that it "does not find under these facts that a favorable DNA test, meaning detecting the presence of a co-defendant's DNA or another person's DNA [on the knife], would have resulted in a different verdict or more lenient sentence for [Petitioner]." Finally, the superior court held that "[t]o the extent that [Petitioner] asked the Court to allow postconviction DNA testing pursuant to A.R.S. § 13-4240(C)(1)(b), the record [does] not support a finding that DNA testing 'will produce exculpatory evidence'" and denied the motion. See A.R.S. §13-4240(C)(1)(b) (2022) (emphasis added).

Accordingly, the superior court found that Hooper "has not met the statutory grounds for postconviction fingerprint testing pursuant to A.R.S. § 13-4241(A)(2)" and "has not met the statutory grounds for postconviction DNA testing pursuant to either A.R.S. § 13-4240(B) or A.R.S. § 13-4240(C)," and therefore, the court denied the motion for post-conviction DNA and advanced forensic testing.

This Court has considered Hooper's Petition for Special Action and Appendices, State's Response, Hooper's Reply, and the *Amicus Curiae* Brief in Support of Petitioner filed by Arizona Attorneys for Criminal Justice and the Arizona Capital Representation Project. Petitioner asserts that the superior court abused its discretion and exceeded its authority in denying his request for post-conviction fingerprint and DNA testing pursuant to A.R.S. §§ 13-4240 and -4241. However, Petitioner has failed to demonstrate that the superior court abused its discretion, or made legally untenable rulings, incorrect factual findings, or denied Petitioner justice.

Jurisdiction

The Court has jurisdiction pursuant to Arizona Constitution, article VI, section 5(3). Hooper's petition raises questions that require the Court to interpret and apply A.R.S. § 13-4240, § 13-4241, a recently enacted statute, and Ariz. R. Crim. P. 32.17, and the

outcome is of statewide importance because the questions before the Court have implications for post-conviction motions for DNA and advanced forensic testing across Arizona. Therefore, special action jurisdiction is appropriate, and should be exercised because Hooper has no "equally plain, speedy, and adequate remedy." Ariz. R.P. Spec. Act. 8(a).

Standard of Review

In reviewing a trial court's order in the context of a special action, this Court must find that the superior court abused its discretion or exceeded its jurisdiction or legal authority before granting relief. *Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, 253 ¶ 10 (2003); Ariz. R.P. Spec. Act. 3. "The special action requests extraordinary relief, and acceptance of jurisdiction of a special action is highly discretionary with the court to which the application is made." Ariz. R.P. Spec. Act. 3, State Bar Comm. Note; see, e.g., *State v. Simon*, 229 Ariz. 60, 61 ¶ 4 (App. 2012) ("Our special action jurisdiction is discretionary.") (quotations omitted).

The Superior Court Did Not Abuse its Discretion

Section 13-4240(B) provides, in pertinent part, that "the court shall order deoxyribonucleic acid testing if. . . [a] reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through deoxyribonucleic acid testing." A.R.S. § 13-4240(B)(1).

Section 13-4240(C) provides, in pertinent part, that "the court may order deoxyribonucleic acid testing if. . . [a] reasonable probability exists that either: (a) [t]he petitioner's verdict or sentence would have been more favorable if the results of deoxyribonucleic acid testing had been available at the trial leading to the judgment of conviction, [or] (b) [d]eoxyribonucleic acid testing will produce exculpatory evidence." A.R.S. § 13-4240(C)(1)(a), (b).

Section 13-4241(B) provides, in pertinent part, that "the court shall order the new forensic testing if. . . [a] reasonable probability exists that the petitioner would not have been prosecuted or convicted if exculpatory results had been obtained through the new forensic testing." A.R.S. § 13-4241(B)(1).

Ariz. R. Crim. P. 32.17 provides, in pertinent part, that "the court must order DNA testing if the court finds that. . . a reasonable probability exists that the defendant would not have been prosecuted, or the defendant's verdict or sentence would have been more favorable, if DNA testing would produce exculpatory evidence." Ariz. R. Crim. P. 32.17(d)(1)(A).

Hooper contends that the proper analysis is "if the jury had exculpatory results of forensic testing. . . the case either would never have been charged or if charged, there is a reasonable probability [] Hooper would not have been convicted." Similarly, Hooper argues that § 13-4240(B) and § 13-4241(B) "mandate[] testing, *even if the trial evidence was overwhelming*, so long as forensic testing holds out just a reasonable probability that new evidence would have led to a different outcome" or to a more favorable verdict. Hooper is incorrect.

The proper analysis requires the court to order the requested DNA testing if a reasonable probability exists that the petitioner would not have been prosecuted or convicted *if exculpatory results had been obtained through [DNA] testing*. A.R.S. § 13-4240(B) (emphasis added). The wording of, and more importantly the punctuation in Ariz. R. Crim. P. 32.17 provides clarity for how courts should review a request for DNA testing. Rule 32.17 provides that "the court must order DNA testing if the court finds that. . . [a] reasonable probability exists that the defendant would not have been prosecuted, or the defendant's verdict or sentence would have been more favorable, *if DNA testing would produce exculpatory evidence*." Ariz. R. Crim. P. 32.17(d)(1)(A) (emphasis added).

Here, the superior court applied the proper analysis and concluded, because the trial testimony was "compelling and consistent, and was corroborated" by circumstantial and other physical evidence, even if the DNA testing resulted in exculpatory evidence (i.e., evidence inculcating other persons), there is not a reasonable probability that Hooper would not have been prosecuted or convicted.

Moreover, while Hooper's dispute with the probative value of each individual piece of evidence and arguments that each is less than compelling are well taken, the superior court's finding that the "totality" of the evidence was significant and pointed to Hooper was not an abuse of discretion. Likewise, Hooper's argument that the superior court abused its discretion by failing "to draw obvious inferences from [potentially] exculpatory DNA evidence," incorrectly focuses on the *possibility* that Merrill's or Campagnoni's DNA *might* be present on the knife. Hooper fails to account for the fact the superior court found that the *possibility* another person's DNA *might* be present on the knife, when coupled with the "overwhelming evidence" of Hooper's guilt presented at trial (and in the Court's opinion is not exculpatory based on the complete facts of this case), does not create a reasonable probability that Hooper would not have been prosecuted or convicted, or that he would have received a more favorable verdict or sentence. See Maricopa Cnty. Sup. Ct. M.E. dated 10-21-2022 (docketed 10-24-2022), at 9 (discussing that the presence

of Bracy, McCall, Campagnoni, Merrill, or Kleinfeld's DNA on the knife "would not negate the significant evidence from different sources against [Hooper] for his role in the murders"); see also *Hooper v. Shinn*, 985 F.3d 594, 602-04 (9th Cir., January 8, 2021) (the Ninth Circuit Court of Appeals' discussion of the "overwhelming evidence" of Hooper's guilt presented by the State).

The superior court's analysis and conclusion pursuant to § 13-4240(C) that exculpatory DNA results would not create a reasonable probability that Hooper would not have been prosecuted or convicted or that he would have received a more favorable verdict or sentence was not an abuse of discretion. Furthermore, the superior court was within its discretion when it held that it could not "find the verdict or the sentence 'would have been more favorable' in light of so much evidence against [Hooper]." Coupled with a reasonable explanation about why another person's DNA may have been on the knife, this application of § 13-4240(C) by the superior court was not an abuse of discretion.

Hooper is also incorrect when he argues that when a petitioner requests advanced forensic testing—here, of fingerprints found in the Redmonds' home—the court is required to order the testing, "*even if the trial evidence was overwhelming, so long as forensic testing holds out just a reasonable probability that new evidence would have led to a different outcome.*" Here, the superior court applied the correct analysis: Whether Hooper had established, if potentially exculpatory results (i.e., someone else's fingerprints at the crime scene) were obtained through fingerprint testing, is there a reasonable probability he would not have been prosecuted or convicted.

Here, the superior court acknowledged that a determination through advanced fingerprint analysis that Merrill's or Campagnoni's fingerprints were in the residence would be inconsistent with the State's version of the facts, but found that even that fact would not outweigh the overwhelming evidence establishing Hooper's guilt, and therefore did not establish a reasonable probability Hooper would not have been prosecuted or convicted. Hence, Hooper has failed to establish that the superior court abused its discretion when it denied his request for forensic testing pursuant to § 13-4241(A)(2) based on the showing required in § 13-4241(B)(1).

Therefore, upon consideration,

IT IS ORDERED that the Court accepts special action jurisdiction of Hooper's Petition for Special Action.

IT IS FURTHER ORDERED that the Court affirms the superior court's finding that Hooper has not met the statutory grounds for

post-conviction fingerprint testing pursuant to A.R.S. § 13-4241 and has not met the statutory grounds for post-conviction DNA testing pursuant to either A.R.S. § 13-4240(B) or A.R.S. § 13-4240(C).

IT IS FURTHER ORDERED that the Court affirms the superior court's order denying Hooper's motion for post-conviction DNA and advanced forensic testing.

DATED this 10th day of November, 2022.

For the Court:

/s/

ROBERT BRUTINEL
Chief Justice

Vice Chief Justice Timmer, Justice Lopez, and Justice Beene did not participate in the determination of this matter.

TO:

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