APPENDIX A

Arizona Court of Appeals, Division Two (2 CA-CR 25-0022)

Mandate

January 29th, 2026

Court of Appeals

STATE OF ARIZONA
DIVISION TWO

M A N D A T E

2 CA-CR 2025-0022-PR
Department A
Pima County
Cause No. CR20193847001

RE: STATE OF ARIZONA v. BRIAN MATTHEW MACHARDY

To: The Superior Court of Pima County and the Hon. Kimberly H. Ortiz, Judge, in relation to Cause No. CR20193847001.

This cause was brought before Division Two of the Arizona Court of Appeals in the manner prescribed by law. This Court rendered its Memorandum Decision and it was filed on May 29, 2025.

A Motion for Reconsideration was filed and DENIED by Order of this Court. A Petition for Review was filed and DENIED by Order of the Arizona Supreme Court.

NOW, THEREFORE, YOU ARE COMMANDED to conduct such proceedings as required to comply with the accompanying Memorandum Decision of this Court.

I, Lisa V. Howell, Clerk of the Court of Appeals, Division Two, hereby certify the accompanying Memorandum Decision (see link below) to be a full and accurate copy of the decision filed in this cause on May 29, 2025.

To view the decision, please click on the following link:
https://www.appeals2.az.gov/APL2NewDocs1/COA/1099/4028948.pdf

DATED: January 29, 2026

/s
Lisa V. Howell
Judge Pro Tempore/Clerk of the Court

2 CA-CR 2025-0022-PR
Pima County Superior Court Number CR20193847001

Superior Court Record returned on January 29, 2026

SEALED DOCUMENTS - 2 Envelopes

RECEIVED:_____
Clerk, Pima County Superior Court

BY:_____
Deputy Clerk

2 CA-CR 2025-0022-PR
Pima County Superior Court Number CR20193847001

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APPENDIX B

Arizona Supreme Court (CR 25-0202 PR)

Order, Denying Review

December 15th, 2025

Supreme Court
STATE OF ARIZONA

ANN A. SCOTT TIMMER
Chief Justice

ARIZONA STATE COURTS BUILDING
1501 WEST WASHINGTON STREET, SUITE 402
PHOENIX, ARIZONA 85007
TELEPHONE: (602) 452-3396

AARON C. NASH
Clerk of the Court

December 15, 2025

RE: STATE OF ARIZONA v BRIAN MATTHEW MACHARDY
Arizona Supreme Court No. CR-25-0202-PR
Court of Appeals, Division Two No. 2 CA-CR 25-0022
Pima County Superior Court No. CR20193847001

GREETINGS:

The following action was taken by the Arizona Supreme Court on December 12, 2025, regarding the above-referenced cause:

ORDERED: Petition for Review = DENIED

Aaron C. Nash, Clerk

TO:
Alice Jones
James William Rappaport
Brian MacHardy, ADCRR 347084, Arizona State Prison, CACF- Geo Unit
Lisa V Howell
ck

APPENDIX C

Arizona Court of Appeals, Division Two (2 CA-CR 25-0022 PR)

Memorandum Decision

May 29th, 2025

IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

BRIAN MATTHEW MACHARDY,
Petitioner.

No. 2 CA-CR 2025-0022-PR
Filed May 29, 2025

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. 31.19(e).

Petition for Review from the Superior Court in Pima County
No. CR20193847001
The Honorable Kimberly H. Ortiz, Judge

REVIEW GRANTED; RELIEF DENIED

Brian M. MacHardy, Florence
In Propria Persona

MEMORANDUM DECISION

Vice Chief Judge Eppich authored the decision of the Court, in which Presiding Judge Kelly and Judge Brearcliffe concurred.

E P P I C H, Vice Chief Judge:

¶1 Petitioner Brian MacHardy seeks review of the trial court's ruling dismissing his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion, *see State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015), which MacHardy has failed to establish here.

¶2 After a bench trial, MacHardy was convicted of nine counts of sexual exploitation of a minor. The trial court sentenced him to nine consecutive ten-year prison terms. This court affirmed his convictions and sentences on appeal. *State v. MacHardy*, 254 Ariz. 231 (App. 2022). As part of his appeal, MacHardy argued that his state and federal constitutional right to privacy had been violated when law enforcement officers illegally searched his entire computer, rather than only the files he had shared on BitTorrent,[1] using software not available to the general public. *Id.* ¶¶ 1, 6.

¶3 Thereafter, MacHardy initiated a proceeding for post-conviction relief. Appointed Rule 32 counsel subsequently filed a notice, avowing that she had reviewed the record "for any viable issues" but would not be filing a petition for post-conviction relief. She requested additional time for MacHardy to file a pro se petition. The court granted that request. In his pro se petition, MacHardy asserted two claims: (1) his state and federal constitutional rights had been violated when law enforcement officers conducted "an improper search of a hard drive," and (2) trial counsel had provided ineffective assistance by failing to seek suppression of evidence seized pursuant to a search warrant. As to the later claim, MacHardy specifically argued that counsel should have moved to suppress the evidence because Detective Barry had violated the constitutional rights of the BitTorrent clients by using Torrential Downpour

[1]BitTorrent is a peer-to-peer file sharing network.

and Torrential Downpour Receptor "to gain unauthorized entry into" their community.

¶4 In October 2024, the trial court summarily dismissed MacHardy's petition. It found that MacHardy's "claim of illegal search is precluded as the suppression issue was fully adjudicated in its merits on appeal and for failing to raise the claim at the trial court level." The court further found that trial counsel had not provided ineffective assistance "for failing to seek suppression of the exploitive videos/files shared by [MacHardy's] computer based on law enforcement's use of Torrential Downpour and Torrential Downpour Receptor as investigative tools." The court explained that no illegal search had occurred because MacHardy was already sharing the files on BitTorrent and that, even assuming a search had occurred, MacHardy "had no expectation of privacy in information he already was sharing with the other non-law enforcement users on the file sharing network." After issuing its ruling, the court gave MacHardy leave to file a reply to the state's response because of "mailing difficulties." After receiving and reviewing that reply, the court affirmed its October 2024 dismissal. This petition for review followed.

¶5 On review, MacHardy contends the trial court erred by failing to address his claim that his hard drive was improperly searched by officers. He reasons that his current claim raised in this Rule 32 proceeding is distinct from his argument raised on appeal and that his current claim, therefore, cannot be precluded as finally adjudicated on the merits under Rule 32.2(a)(2). In order to distinguish his current claim, MacHardy seems to maintain that he had an expectation of privacy in his internet protocol (IP) address. But an IP address is not physically part of a hard drive, and, as was discussed in MacHardy's appeal, there is no expectation of privacy in one's IP address because it is voluntarily disclosed to third parties. *MacHardy*, 254 Ariz. 231, ¶ 7. MacHardy also contends that when he joined the BitTorrent community, he agreed that any material shared "would be subject to sharing with only *other members* who agreed to the same articles of agreement," suggesting that Detective Barry had improperly accessed the material. But, as we also discussed in his appeal, peer-to-peer network users enjoy no expectation of privacy to materials shared on the network. *Id.*

¶6 In any event, however, the trial court also concluded that MacHardy's current claim was precluded because he had failed to raise it at trial. Rule 32.2(a)(3) provides that a defendant is precluded from relief under Rule 32.1(a) based on any ground that was "waived at trial or on appeal, or in any previous post-conviction proceeding, except when the

claim raises a violation of a constitutional right that can only be waived knowingly, voluntarily, and personally by the defendant." To the extent MacHardy's constitutional claim of an illegal search could be construed as distinct from his illegal search argument raised on appeal, his current claim would therefore be precluded as waived at trial or on appeal.

¶7 MacHardy nevertheless argues that "the introduction of improperly seized evidence at trial is a miscarriage of justice that cannot be knowingly, voluntarily, or intelligently waived." But the right involved here—the right against improperly admitted evidence—did not require a knowing, voluntary, and personal waiver. *See Stewart v. Smith*, 202 Ariz. 446, ¶ 9 (2002) (describing right to counsel, right to jury trial, and right to twelve-person jury as those requiring personal waiver); *cf. State v. Swoopes*, 216 Ariz. 390, ¶ 28 (App. 2007) ("An alleged violation of the general due process right of every defendant to a fair trial, without more, does not save that belated claim from preclusion."). The trial court therefore did not err in finding this claim precluded. *See Roseberry*, 237 Ariz. 507, ¶ 7.

¶8 MacHardy next argues that the trial court erred by rejecting his claim that trial counsel had been ineffective in failing to request the suppression of evidence seized pursuant to a search warrant. He again argues that Detective Barry improperly relied on information obtained through the use of the Torrential Downpour and Torrential Downpour Receptor to obtain the search warrant. And he maintains the court improperly relied on trial testimony to conclude that "no illegal search occurred." Instead, MacHardy maintains that his argument was based on evidence presented at the March 2020 evidentiary hearing, where counsel failed to raise the issue of probable cause to search.

¶9 To prevail on a 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 (2006) (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984)). "Failure to satisfy either prong of the *Strickland* test is fatal to an ineffective assistance of counsel claim." *Id.*

¶10 Here, the trial court's conclusion that "no illegal search occurred" seems directed at the prejudice prong of the *Strickland* test. A defendant establishes prejudice if he shows 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.* To show prejudice, MacHardy needed to establish a reasonable probability

that a motion to suppress would have been successful, such that the evidence would have been suppressed and the outcome would have been different.

¶11 The trial court's conclusion that "no illegal search occurred" necessarily means that a motion to suppress on this issue would have been denied. *See State v. Mitcham*, 258 Ariz. 432, ¶ 32 (2024) (courts invoke judicially created "exclusionary rule" to suppress evidence obtained in violation of Fourth Amendment). Moreover, the court did not err in considering the trial testimony when evaluating the prejudice to MacHardy. *See Strickland*, 466 U.S. at 695 (in determining prejudice under claim of ineffective assistance, court "must consider the totality of the evidence before the judge or jury").

¶12 MacHardy also argues that the trial court "failed to address Detective Barry's illegal possession of child sexual abuse material"—an argument MacHardy raised as part of his claim of ineffective assistance. But because of the court's resolution of the ineffective-assistance claim on prejudice grounds, it was not required to separately address this sub-argument. *See Roseberry*, 237 Ariz. 507, ¶ 7 ("We will affirm a trial court's decision if it is legally correct for any reason."); *State v. Davis*, 226 Ariz. 97, ¶ 22 (App. 2010) (we assume trial court knows law and has applied it correctly). Moreover, as the state pointed out in its response to MacHardy's Rule 32 petition below, law enforcement officers are immune from prosecution when they possess such materials for investigative purposes.[2] *See Cervantes v. Cates*, 206 Ariz. 178, ¶ 30 (App. 2003). MacHardy has therefore failed to establish that the court erred in rejecting this claim. *See Roseberry*, 237 Ariz. 507, ¶ 7.

¶13 We grant review but deny relief.

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[2]In response to *Cervantes*, MacHardy contends that if Barry legally possessed the material, it would not "be necessary to obtain a search warrant for evidence" he already possessed. But the search warrant was for MacHardy's residence, not just the online material. And, as we concluded in his direct appeal, Barry did not need a search warrant to obtain the materials MacHardy had shared on the peer-to-peer network.

APPENDIX D

Arizona Court of Appeals, Division Two (2 CA-CR 25-0022 PR)
Order, Denying Motion for Reconsideration / Motion to Vacate
June 18th, 2025

Court of Appeals

STATE OF ARIZONA
DIVISION TWO

O R D E R

2 CA-CR 2025-0022-PR
Department A
Pima County
Cause No. CR20193847001

RE: STATE OF ARIZONA v. BRIAN MATTHEW MACHARDY

Pursuant to Motion for Reconsideration/Motion to Vacate,

ORDERED: Motion for Reconsideration/Motion to Vacate is DENIED.

Judges Brearcliffe and Eppich concurring.

DATED: June 18, 2025

_____/s/_____
Michael F. Kelly
Presiding Judge

2 CA-CR 2025-0022-PR
Pima County Superior Court Number CR20193847001

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Additional material from this filing is available in the Clerk's Office.