

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

JUL 25 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2013-0182-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JEROME L. PRINGLE,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2009145494001DT

Honorable Paul J. McMurdie, Judge

REVIEW GRANTED; RELIEF DENIED

Jerome L. Pringle

Tucson
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Petitioner Jerome Pringle 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). Pringle has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Pringle was convicted of first-degree murder and theft of means of transportation. The trial court imposed a natural life term of imprisonment on the murder conviction and a concurrent, eight-year term on the theft conviction. Pringle thereafter initiated a proceeding for post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and was “unable to find any claims for relief to raise in post-conviction relief proceedings.” In a pro se petition, however, Pringle raised numerous claims, including (1) challenges to the indictment and grand jury proceedings; (2) the “State never proved it[]s grounds for premeditated [first] degree murder beyond a reasonable doubt”; (3) his statements to a police detective were involuntary because he was “intoxicated and high”; (4) certain video evidence demonstrating Pringle’s remorse was not shown during his sentencing hearing; (5) a police detective “lied to the courts” in a statement in the presentence report; (6) the presentence report writer “presented prejudiced and unlawful opinions to the court”; (7) the prosecutor “falsified documents and presented perjured evidence to the court”; (8) counsel was ineffective in failing to challenge the grand jury proceeding, withholding negative testimony about the victim, refusing to let him tell the judge “that to spit on someone is an assault” and the victim “initiated this tragedy by spitting in [his] face,” and “led [him] to believe that the only way [to] get a lesser charge was to sign the

plea . . . never intend[ing] to challenge the state on its charge.” The trial court summarily denied relief.

¶3 On review, Pringle includes a copy of his petition for post-conviction relief in an appendix and lists as bullet points various “issues presented for review.” He also lists “reasons why this court should grant the petition” without citation to the record or supporting authority. *See* Ariz. R. Crim. P. 32.9(c)(1). These reasons focus mainly on an argument that the state did not “prove” he had committed first-degree murder and he therefore should be “charged in the [second] degree.” He also states broadly that counsel was “incompetent.” Pringle has failed to comply with the requirements of Rule 32.9, and review could be denied or his petition for review could be dismissed solely on that basis. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995); *State v. French*, 198 Ariz. 119, ¶ 9, 7 P.3d 128, 131 (App. 2000), *disapproved on other grounds by Stewart v. Smith*, 202 Ariz. 446, ¶ 10, 46 P.3d 1067, 1071 (2002).

¶4 In any event, we cannot say the trial court abused its discretion in dismissing the petition for post-conviction relief. To the extent Pringle sought relief based on alleged errors in grand jury proceedings or during his arrest, such claims were waived. *See State v. Moreno*, 134 Ariz. 199, 200, 655 P.2d 23, 24 (App. 1982) (pleading defendant waives right to appeal “all nonjurisdictional defenses, errors and defects occurring prior to the plea proceedings”), *disapproved on other grounds by State ex rel. Dean v. Dolny*, 161 Ariz. 297, 778 P.2d 1193 (1989); *see also Tollett v. Henderson*, 411 U.S. 258, 267 (1973) (“When a criminal defendant has solemnly admitted in open court

that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.”). And, although Pringle now complains the evidence was insufficient to sustain a conviction for premeditated murder, at his change-of-plea hearing his attorney provided the court with the factual basis for Pringle’s plea, stating that he had “with premeditation . . . caused the death of” the victim, and Pringle expressly agreed that was what had happened.

¶5 As to Pringle’s sentencing-related claims, the video evidence apparently contained statements Pringle had made out loud, to himself while in a police interrogation room, unaware he was being recorded. Those statements were provided to the trial court by counsel in written form as part of a supplemental sentencing memorandum and correction to the presentence report. Likewise, counsel pointed out to the court that the detective’s statement which Pringle challenges was inaccurate; counsel also pointed out the statement in the presentence report that Pringle now challenges was “an assumption without all the information and . . . inappropriate.” The court expressly indicated it had considered that supplement in reaching its sentencing decision. We therefore cannot say the court abused its discretion in determining Pringle had failed to establish that his claim was colorable or that his sentence was “in violation of the Constitution of the United States or of the State of Arizona,” that “[t]he sentence imposed exceeded the maximum authorized by law, or [wa]s otherwise not in accordance with the sentence authorized by law.” *See* Ariz. R. Crim. P. 32.1(a), (c); *State v. Puls*, 176 Ariz. 273, 275, 860 P.2d 1326,

1328 (App. 1993) (“Appellant was required to present a colorable claim for relief before being entitled to an evidentiary hearing. A colorable claim is one which, if the allegations are true, might have changed the outcome.”).

¶6 Finally, the trial court did not abuse its discretion in rejecting Pringle’s claim of ineffective assistance of counsel. “To state a colorable claim of ineffective assistance of counsel,” Pringle was required to “show both that counsel’s performance fell below objectively reasonable standards and that this deficiency prejudiced [him].” *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006), citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984). When a defendant has pleaded guilty, a claim of ineffective assistance of counsel is limited “to attacks on the voluntary and intelligent nature of the guilty plea, through proof that the advice received from counsel was not ‘within the range of competence demanded of attorneys in criminal cases.’” *Blackledge v. Perry*, 417 U.S. 21, 30 (1974), quoting *McMann v. Richardson*, 397 U.S. 759, 771 (1970). The allegations in Pringle’s petition were insufficient to show that counsel’s advice to accept the plea agreement here, which allowed Pringle to avoid facing the death penalty, was outside the range of competence. Indeed, most of Pringle’s complaints about counsel’s performance relate to matters of strategy. See *State v. Beaty*, 158 Ariz. 232, 250, 762 P.2d 519, 537 (1988) (“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.).

¶7 For all these reasons, although we grant the petition for review, we deny relief.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ Michael Miller
MICHAEL MILLER, Judge