

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

TERRANCE A. PHILLIPS,  
*Petitioner.*

No. 2 CA-CR 2015-0408-PR  
Filed December 3, 2015

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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NOT FOR PUBLICATION  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.*

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Petition for Review from the Superior Court in Coconino County  
No. CR20031249  
The Honorable Mark R. Moran, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Terrance A. Phillips, Tucson  
*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Kelly<sup>1</sup> concurred.

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H O W A R D, Judge:

¶1 Terrance Phillips petitions for review of the trial court’s summary dismissal of his successive, pro se petition for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We grant review, but we deny relief.

¶2 According to Phillips’s successive petition for post-conviction relief, he was convicted of first-degree murder pursuant to a plea agreement and was sentenced to a term of natural life in prison. He claimed his attorney was ineffective in advising him and improperly coerced him into accepting the plea agreement. Specifically, he maintains counsel failed to inform him that “the shot fired from the [weapon] allegedly in [his] possession during the robbery caused only flesh wounds to the victim and were not the cause of death.” He also claimed he was wrongly convicted because he “did not have the requisite intent/premeditation to support an indictment for 1st degree murder.”

¶3 In its response to the petition below, the state argued Phillips’s claim of ineffective assistance of counsel is precluded by his failure to raise it in his first Rule 32 proceeding. The state also maintained that evidence was sufficient to support Phillips’s guilty plea, entered “to first-degree murder, under the Felony Murder theory,” as evinced by Phillips telling the court, as the factual basis for his plea, that he and a co-defendant “went into the victim’s home

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<sup>1</sup>The Hon. Virginia C. Kelly, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

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intending to rob him, they each possessed a firearm, and that they each shot the victim[, who] died as a result of his injuries.”

¶4 The trial court found Phillips had failed to state a colorable claim for relief and dismissed his petition without further discussion. In his petition for review of that ruling, Phillips repeats the arguments he raised below, without addressing the state’s contentions that his ineffective assistance claim is precluded and that his claim of an insufficient factual basis is without merit.

¶5 We review a summary denial of post-conviction relief for an abuse of discretion, *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006), and we find none here. Phillips’s claim of ineffective assistance of counsel is precluded because it could have been raised in his first Rule 32 proceeding. *See* Ariz. R. Crim. P. 32.2(a)(3). His claim of insufficient evidence to support his guilty plea is precluded for the same reason, and also appears to lack legal merit. Although we do not have the full record before us, Phillips does not dispute the state’s characterization of his statements to the trial court at a change of plea hearing and, as the state pointed out, under those facts, Phillips committed felony murder, and no showing of premeditation or intention to kill was required. *See* A.R.S. § 13-1105(A)(2), (B); *State v. Murray*, 184 Ariz. 9, 31-32, 906 P.2d 542, 564-65 (1995) (to establish felony murder, “state need only prove that defendant, either as a principal or as an accomplice, committed or attempted to commit robbery and that someone was killed in the course of and in furtherance of the robbery”); *see also State v. Wilson*, 179 Ariz. 17, 19 n.1, 875 P.2d 1322, 1324 n.1 (App. 1993) (noting “defendant’s responsibility to see that the record contains the material to which he takes exception” and “the presumption that the missing material supports the action of the trial court”).

¶6 For the foregoing reasons, we grant review but deny relief.