IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CARL DEAN SCHLOBOM,
Petitioner.

No. 2 CA-CR 2016-0115-PR
Filed June 15, 2016

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Cochise County
No. S0200CR200500143
The Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Law Office of Emily Danies, Tucson
By Emily Danies
Counsel for Petitioner

MEMORANDUM DECISION

Judge Staring authored the decision of the Court, in which Presiding Judge Howard and Judge Espinosa concurred.

S T A R I N G, Judge:

¶1 Carl Schlobom seeks review of the trial court's order denying his petition for post-conviction relief. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Schlobom has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, Schlobom was convicted of first-degree murder, kidnapping, and two counts of aggravated assault. The trial court sentenced him to a term of natural life for murder, plus five additional years. We affirmed his convictions and sentences on appeal. *State v. Schlobom*, No. 2 CA-CR 2006-0104 (memorandum decision filed Aug. 20, 2007).

¶3 Schlobom sought post-conviction relief, filing a petition raising claims of ineffective assistance of counsel, including that counsel had failed to seek a psychiatric evaluation before trial or raise an insanity defense. Court-appointed counsel filed a notice stating she had reviewed the record but found no colorable claims to raise pursuant to Rule 32. In April 2009, the trial court dismissed the proceeding when Schlobom failed to file a pro se petition within the allotted time. It concluded none of the claims raised in Schlobom's original petition warranted relief.

¶4 In June 2009, Schlobom filed another petition raising similar claims. The trial court again appointed counsel, who apparently did not file a petition. Finding the claims raised in Schlobom's 2009 pro se petition precluded, the court dismissed the proceeding. In 2011, Schlobom filed a notice and petition, again asserting various claims related to his mental health. After it considered various supplemental filings by Schlobom, the court appointed counsel, stating it could not "declare that defendant's issue of trial counsel's ineffectiveness is precluded."

¶5 Appointed counsel filed a petition contending that Schlobom's mental health records since his arrest constituted newly discovered evidence and that his trial counsel had been ineffective in failing to "request[] a Rule 11 evaluation or at least a psychiatric evaluation." Without addressing the claim of newly discovered evidence, the trial court determined Schlobom's claims of ineffective assistance "are not precluded" and, finding those claims colorable, set an evidentiary hearing. After that hearing, the court denied relief. It concluded that "any mental health records from 2005 and 2006" would not have constituted mitigating evidence and, in any event, "at the time of sentencing" it would not have found Schlobom's mental health diagnosis to be a mitigating circumstance. The court thus rejected Schlobom's claim of ineffective assistance of counsel, finding he had demonstrated neither that counsel had fallen below prevailing professional norms or resulting prejudice. This petition for review followed.

¶6 On review, Schlobom again asserts that he was "suffering from serious mental illness at the time of his crime and through trial and sentencing," and that his trial counsel was ineffective in failing to raise that issue before trial or as mitigation.[1] But, even if we agreed with Schlobom that this claim had merit, he is not entitled to relief. Schlobom's most recent notice of post-conviction relief is untimely; therefore, he may only raise claims pursuant to Rule 32.1(d) through (h). *See* Ariz. R. Crim. P. 32.4(a). Those subsections do not encompass a claim of ineffective assistance of trial counsel, which falls under Rule 32.1(a). *See State v. Petty*, 225 Ariz. 369, ¶ 11, 238 P.3d 637, 641 (App. 2010); *see also State v. Banda*, 232 Ariz. 582, n.2, 307 P.3d 1009, 1012 n.2 (App. 2013) ("We can affirm the trial court's ruling for any reason supported by the record.").

¶7 Although we grant review, we deny relief.

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[1]On review, Schlobom does not discuss his claim of newly discovered evidence raised pursuant to Rule 32.1(e). Accordingly, we do not address it.