

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MILTON GARRETT FLOWERS,  
*Petitioner.*

No. 2 CA-CR 2017-0160-PR  
Filed August 17, 2017

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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NOT FOR PUBLICATION  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 Cochise County  
No. CR201100884  
The Honorable Wallace R. Hoggatt, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Zohlmann Law Offices, Tombstone  
By Robert J. Zohlmann  
*Counsel for Petitioner*

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MEMORANDUM DECISION

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

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ESPINOSA, Judge:

¶1 In this successive post-conviction proceeding, petitioner Milton Flowers seeks review of the trial court's order dismissing 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). Flowers has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Flowers was convicted of possession of a dangerous drug for sale. In April 2012, the trial court sentenced him to a stipulated, somewhat aggravated 13.5-year term of imprisonment. In October 2016, Flowers initiated this proceeding for post-conviction relief, arguing he is entitled to relief based on what he characterized as a *Brady*<sup>2</sup> violation and asserting his claim is based on newly discovered evidence of misconduct in another matter by one of the investigating officers in his case, Michael Mitchell.<sup>3</sup> In its ruling

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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.

<sup>2</sup>See generally *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

<sup>3</sup>Flowers also asserted below that the doctrine of nonmutual offensive collateral estoppel prohibited the state from challenging the factual findings and conclusions of law in a different matter involving Mitchell's conduct. He does not expressly challenge the denial of that issue on review, but instead asserts "[t]he remaining issues raised by the parties [in the Rule 32 petition below] were not decided by the

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dismissing the petition below, the court determined Flowers did not raise a colorable *Brady* claim because Mitchell's involvement was not material to his case and found the evidence was not newly discovered because it was, at most, merely impeaching. *See* Ariz. R. Crim. P. 32.1(e)(3) (excluding from available relief newly discovered material fact that is relevant solely for impeachment of non-critical testimony).

¶3 On review, Flowers contends the trial court abused its discretion by determining that the "information of Mitchell's 2002 criminal acts" in an unrelated matter was not material to his case. He also maintains that although the trial court's materiality decision was not necessarily "right or wrong," the court nonetheless "abused its discretion in making its finding of no materiality without considering the best evidence of Corporal Mitchell's participation in [this] case, to wit[:] his reports submitted in [this] case."<sup>4</sup> The court, however, clearly identified Flowers' claims and resolved them correctly based on a thorough, well-reasoned analysis. We need not repeat that analysis here; instead, we adopt its ruling insofar as it relates to the claims based on *Brady* and newly discovered evidence. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶4 Finally, we direct Flowers to footnote six and page seven of the trial court's ruling, in which the court referred to "the supplemental narrative of Corporal Mitchell and the transcript of the Grand Jury proceedings, both of which were attached to defendant's Rule 32 Petition." Contrary to Flowers' assertion, the court evidently did review, *inter alia*, Mitchell's supplemental narrative report and did not rely "solely" on the facts included in the state's response to the petition below, as Flowers maintains.

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trial court and, therefore, are not properly before this Court for review."

<sup>4</sup>Flowers directs us to three exhibits as evidence of Mitchell's "reports," only one of which appears to involve a report authored by Mitchell.

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¶5 Because we cannot say the trial court abused its discretion in denying Flowers' petition, we grant review, but we deny relief.