

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

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ARNOLD MILLS GRANILLO,  
*Petitioner.*

No. 2 CA-CR 2018-0217-PR  
Filed January 9, 2019

---

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NOT FOR PUBLICATION  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. CR20123713001  
The Honorable Javier Chon-Lopez, Judge

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

Harold L. Higgins P.C., Tucson  
By Harold Higgins  
*Counsel for Petitioner*

STATE v. GRANILLO  
Decision of the Court

---

**MEMORANDUM DECISION**

Presiding Judge Eppich authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

---

E P P I C H, Presiding Judge:

¶1 Petitioner Arnold Granillo 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 review a court's denial of post-conviction relief for an abuse of discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7 (2015). We find none here and, accordingly, although we grant review, we deny relief.

¶2 After a jury trial, Granillo was convicted of second-degree murder and sentenced to a presumptive, sixteen-year term of imprisonment. This court affirmed his conviction and sentence on appeal. *State v. Granillo*, No. 2 CA-CR 2014-0399 (Ariz. App. Oct. 1, 2015) (mem. decision). Granillo filed a timely notice of post-conviction relief, followed by a petition in which he alleged claims of trial error and ineffective assistance of trial and appellate counsel.

¶3 In a twenty-two page ruling, the trial court addressed each of Granillo's claims and ultimately found he "failed to state a colorable claim that necessitates an evidentiary hearing or for which he is entitled to relief." This petition for review followed.

¶4 Evidence at trial established that Granillo killed his long-term girlfriend, K.T., by beating her repeatedly with a crowbar. As he did in his petition below, Granillo argues his trial counsel was ineffective in (1) arguing for suppression of Granillo's confession, (2) failing "to make adequate argument" or to present expert psychological testimony in support of his request for a jury instruction for manslaughter, based on a "sudden quarrel or heat of passion," (3) failing to object to alleged prosecutorial misconduct, and (4) failing to present expert psychological testimony at sentencing with respect to "the reasons this killing occurred." He also reasserts his claims that appellate counsel was ineffective in (1) failing to argue the trial court erred in denying the motion to suppress and

STATE v. GRANILLO  
Decision of the Court

the requested manslaughter instruction, and (2) failing to raise prosecutorial misconduct on appeal.<sup>1</sup>

¶5 In its ruling, the trial court clearly identified the issues, as well as the facts relevant to its thorough legal analysis. As to each of his claims, Granillo characterizes the ruling and states why he believes the court was wrong in denying relief. See Ariz. R. Crim. P. 32.9(c)(4)(B) (petition for review to include reasons appellate court should grant petition). We are not persuaded the court abused its discretion.

¶6 For example, the trial court fully reviewed the record, and did so in the context of relevant legal authority, before concluding Granillo's confession was not coerced by direct or implied promises. Granillo contests this determination. After our own review, however, "we cannot say on this record that the trial court was 'clearly and manifestly wrong' in determining that [Granillo's] statements were voluntary." *State v. Greenberg*, 236 Ariz. 592, ¶ 23 (App. 2015) (quoting *State v. Blakley*, 204 Ariz. 429, ¶ 32 (2003)). Nor do we find fault with the court's extensive legal analysis and conclusion that the evidence was insufficient to permit the jury to find the murder based upon a "sudden quarrel or heat of passion resulting from adequate provocation by the victim," A.R.S. § 13-1103(A)(2), or its conclusion that there was no reasonable likelihood that comments made by the prosecutor affected the jury's verdict or deprived Granillo of a fair trial. See, e.g., *State v. Wall*, 212 Ariz. 1, ¶ 23 (2006) (appellate court "defer[s] to the trial judge's assessment of the evidence" in support of jury instruction). Consequently, the court did not abuse its discretion in finding Granillo failed to state colorable claims of ineffective assistance of trial or appellate counsel based on these alleged trial errors. See *State v. Bennett*, 213 Ariz. 562, ¶¶ 21, 25 (2006) (colorable claim of ineffective assistance of counsel requires that defendant "show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant"; prejudice requires showing of reasonable probability of different result, but for counsel's unprofessional errors).

---

<sup>1</sup> To the extent Granillo asserts claims of trial error—that the prosecutor engaged in misconduct and that the trial court erred in denying his motion to suppress and his request for a manslaughter instruction—those claims have been waived on appeal, and are precluded. See Ariz. R. Crim. P. 32.2(a)(3). Accordingly, related arguments are relevant only in the context of Granillo's claims of ineffective assistance of appellate counsel.

STATE v. GRANILLO  
Decision of the Court

¶7 With respect to Granillo’s allegation that trial counsel was ineffective in failing to present expert testimony in support of his request for a provocation instruction, he has failed to contest the trial court’s conclusion that, in the absence of an insanity defense, “an expert witness ordinarily may not give an opinion concerning the defendant’s state of mind at the time of the crime.” *See State v. Ortiz*, 158 Ariz. 528, 532 (1988). We will not find counsel deficient for failing to offer evidence that would have been inadmissible. Finally, although Granillo argues the same psychological evidence “should have been available to the court at sentencing,” the court – the same court that sentenced Granillo – found the presumptive sentence imposed “would not have changed” had such evidence been presented. This failure to state a colorable claim of prejudice is fatal to Granillo’s claim of ineffective assistance at sentencing. *See Bennett*, 213 Ariz. 562, ¶ 21.

¶8 We have reviewed the record and conclude the trial court correctly rejected Granillo’s claims in its thorough and well-reasoned ruling. We see no reason to repeat the court’s analysis here. *See State v. Whipple*, 177 Ariz. 272, 274 (App. 1993). Instead, we adopt it. *See id.* Accordingly, we grant review, but we deny relief.