

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

---

THE STATE OF ARIZONA,  
*Respondent,*

*v.*

GERARDO ALEXANDER MORAGA-PLATT,  
*Petitioner.*

No. 2 CA-CR 2014-0205-PR  
Filed September 8, 2014

---

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.*

---

Petition for Review from the Superior Court in Santa Cruz County

No. CR12080

The Honorable Anna M. Montoya-Paez, Judge

**REVIEW GRANTED; RELIEF DENIED**

---

COUNSEL

George E. Silva, Santa Cruz County Attorney  
By Kimberly J. Hunley, Deputy County Attorney, Nogales  
*Counsel for Respondent*

Law Office of Thomas E. Higgins, P.L.L.C., Tucson  
By Thomas E. Higgins  
*Counsel for Petitioner*

STATE v. MORAGA-PLATT  
Decision of the Court

---

**MEMORANDUM DECISION**

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

---

MILLER, Presiding Judge:

¶1 Petitioner Gerardo Moraga-Platt 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). Moraga-Platt has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Moraga-Platt was convicted of manslaughter and leaving the scene of an accident involving death. The trial court imposed an aggravated 12.5-year sentence on the manslaughter count and suspended the imposition of sentence on the remaining count, placing Moraga-Platt on a seven-year term of probation "to commence upon completion of his term of imprisonment." The aggravated sentence was within the range stated in the plea agreement. Moraga-Platt did not object to the pre-sentence report pursuant to Rule 26.8(a) or to the aggravated sentence pursuant to A.R.S. § 13-702(E).

¶3 Moraga-Platt thereafter initiated a proceeding for post-conviction relief, arguing in his petition that his sentence "exceeded the maximum authorized by law" or was "not in accordance with the sentence authorized by law." He maintained the trial court erred in imposing an aggravated sentence because it had "considered aggravating factors that were part of the underlying offenses." Relying on *State v. Germain*, 150 Ariz. 287, 290, 723 P.2d 105, 108 (App. 1986), he claimed the court had considered his recklessness in aggravation but was not authorized to do so because it was an element of his manslaughter offense and his recklessness had not exceeded that necessary to establish his conviction. He also

STATE v. MORAGA-PLATT  
Decision of the Court

argued the court had improperly considered his “prior conviction a felony rather than a misdemeanor” and had not adequately considered the mitigating circumstances he presented. The same trial judge that imposed sentence denied relief in a detailed order that explained her findings and reasoning.

¶4 Moraga-Platt does not address how the trial court erred in concluding he had failed to present a colorable claim. Indeed, the court pointed out that it had considered multiple other aggravating factors, including physical harm to the victim, emotional and financial harm to the victim’s family, and Moraga-Platt’s flight to Mexico and his concealment of the car after the offense. The court also noted it had found two mitigating factors, but determined the “aggravators substantially outweighed the mitigating facts.” And although the court acknowledged it had referred to a prior felony conviction, it also pointed out that Moraga-Platt “does have a prior juvenile record and a federal charge” which it considered in aggravation. Moraga-Platt does not address these aspects of the court’s ruling on review.

¶5 Moraga-Platt has not met his burden of showing the trial court imposed a sentence that was illegal or outside the range of the plea agreement; therefore, although we grant review, we deny relief.