

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

GABRIEL CHRISTOPHER MORRIS,  
*Petitioner.*

No. 2 CA-CR 2016-0210-PR  
Filed September 9, 2016

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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NOT FOR PUBLICATION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 Pima County  
Nos. CR20123936001, CR20142950001,  
CR20142457001, and CR20143745001  
The Honorable Danelle B. Liwski, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

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

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**MEMORANDUM DECISION**

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

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M I L L E R, Judge:

¶1 Gabriel Morris seeks review of the trial court’s order denying in part his petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). Morris has not met his burden of demonstrating such abuse here.

¶2 Morris pled guilty in four cause numbers to possession of a dangerous drug (CR20123936001), forgery (CR20142457001), fraudulent scheme and artifice (CR20142950001); and aggravated taking the identity of another (CR20143745001). The trial court sentenced him to consecutive prison terms totaling forty years.<sup>1</sup>

¶3 Morris then sought post-conviction relief, arguing his trial counsel was ineffective in failing to argue that his consecutive sentence in CR20142950001 violated a special term of his plea agreement in that case, and by failing to present documentation of his mental health issues. The state agreed that the consecutive sentence in CR20142950001 violated the plea agreement, and the court resentenced Morris on that count, reducing his aggregate prison term for the four convictions to 21.5 years. The court otherwise denied relief, stating it had “properly considered both

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<sup>1</sup>Morris was additionally found guilty after a jury trial of five counts of forgery and one count of theft. The trial court imposed concurrent prison terms in that matter, consecutive to Morris’s other sentences. Those convictions and sentences are not at issue in this post-conviction proceeding.

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aggravating and mitigating circumstances, including documents regarding [Morris's] mental health." This petition for review followed.

¶4 On review, Morris repeats his claim that counsel was ineffective for failing to present documentary evidence of his mental health issues. "To state a colorable claim of ineffective assistance of counsel, a defendant must show both that counsel's performance fell below objectively reasonable standards and that this deficiency prejudiced the defendant." *State v. Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d 63, 68 (2006); accord *State v. Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d 61, 64 (2016); see also *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "To establish deficient performance, a defendant must show that his counsel's assistance was not reasonable under prevailing professional norms, 'considering all the circumstances.'" *Kolmann*, 239 Ariz. 157, ¶ 9, 367 P.3d at 64, quoting *Hinton v. Alabama*, \_\_\_ U.S. \_\_\_, \_\_\_, 134 S. Ct. 1081, 1088 (2014). "To establish prejudice, a defendant must 'show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" *Id.*, quoting *Hinton*, \_\_\_ U.S. at \_\_\_, 134 S. Ct. at 1089.

¶5 Morris has not made a colorable claim of deficient performance or of prejudice. As the state correctly observed, the trial court was made aware of Morris's mental health issues by pretrial services, defense counsel, and the presentence report, including that Morris had been found to be seriously mentally ill as a result of his bipolar disorder. And we presume, as we must, that the court considered that information at sentencing. *State v. Cazares*, 205 Ariz. 425, ¶ 7, 72 P.3d 355, 357 (App. 2003). Morris has not explained how the additional documents included with his petition below meaningfully expand on the information already before the court. The documents state that he was seriously mentally ill and willing to engage in treatment. Morris asserts that because counsel failed to provide the additional documentation, the trial court did not learn the "gravity of those issues." He does not, however, show how the information was materially different from the mental health information available to the court at sentencing. Similarly, he does not address the court's express finding that it considered

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“documents regarding Defendant’s mental health.” Thus, Morris has not shown that trial counsel had any reason to present the documents, or that it would have altered his sentences had counsel done so. *See Bennett*, 213 Ariz. 562, ¶ 21, 146 P.3d at 68. The court did not err in summarily rejecting this claim.

¶6           Although we grant review, we deny relief.