

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

KERRY ALLYNN CHASE, *Petitioner*.

No. 1 CA-CR 15-0132 PRPC
FILED 4-27-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2003-021990-001 SE
No. CR2003-034552-001
The Honorable Bruce R. Cohen, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Lisa Marie Martin
Counsel for Respondent

Kerry Allynn Chase, Buckeye
Petitioner

STATE v. CHASE
Decision of the Court

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Judge Kent E. Cattani joined.

K E S S L E R, Judge:

¶1 Petitioner Kerry Allynn Chase petitions this Court for review from the summary dismissal of his third petition for post-conviction relief in two separate cases. A jury found Chase guilty of perjury in the first case and Chase pled guilty to attempted sexual conduct with a minor and two counts of attempted molestation of a child in the second case. In 2004, the superior court sentenced Chase to ten years' imprisonment for perjury, fifteen years' imprisonment for one count of attempted molestation, and placed him on lifetime probation for the remaining counts. Chase represented himself in both proceedings.

¶2 Chase makes three arguments: (1) that the superior court erred when it failed to appoint counsel to represent him in his petition for post-conviction relief of-right in the molestation case; (2) that the court erred when it dismissed Chase's prior post-conviction relief proceedings; and (3) that his counsel in the perjury case, prior to him representing himself, was ineffective for a variety of reasons. Among the claims of ineffective assistance, Chase argues counsel failed to inform him of two plea offers.

¶3 We deny relief. Chase presented the same claims of ineffective assistance of counsel in his second post-conviction relief proceeding and could have raised the other issues in a prior proceeding as well. Any claim a defendant raised or could have raised in an earlier post-conviction relief proceeding is precluded. Ariz. R. Crim. P. ("Rule") 32.2(a). None of the exceptions under Rule 32.2(b) apply. Further, if Chase wished to challenge the dismissal of his prior post-conviction relief proceedings, he had to do so through timely petitions for review pursuant to Rule 32.9(c).

¶4 Chase argues the claim that counsel failed to inform him of two plea offers is not precluded, despite the fact he raised the same claim in a prior proceeding, because there has been a significant change in the law. See Rule 32.1(g). Chase cites the holding in *Missouri v. Frye*, 566 U.S. 133 (2012), to support his argument. In *Frye*, the Supreme Court held a

STATE v. CHASE
Decision of the Court

defendant has a right to effective assistance of counsel during the plea bargain process. *Id.* at 144. The court further held the right to effective assistance includes the right to have counsel communicate all formal, favorable plea offers to the defendant. *Id.* at 145. *Frye*, however, is not a significant change in the law as applied in Arizona. Arizona has long recognized that the right to effective assistance of counsel extends to the plea bargain process, and that counsel must adequately communicate all plea offers to the defendant. *State v. Donald*, 198 Ariz. 406, 413, ¶¶ 14-17 (App. 2000). As such, there has not been a significant change in the law and the claims are precluded.

¶5 For the reasons stated, we grant review but deny relief.



AMY M. WOOD • Clerk of the Court
FILED: AA