

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

DEC 19 2012

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0306-PR
)	DEPARTMENT A
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
STEPHEN BISHOP,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR02292

Honorable Jane L. Eikleberry, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Nicolette Kneup

Tucson
Attorneys for Respondent

Stephen Bishop

Buckeye
In Propria Persona

H O W A R D, Chief Judge.

¶1 Petitioner Stephen Bishop seeks review of the trial court's order denying his successive 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). Bishop has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Bishop was convicted of five counts of armed robbery, nine counts of kidnapping, one count of aggravated assault and one count of theft. The trial court sentenced him to a combination of consecutive and concurrent prison terms totaling eighty-four years’ imprisonment. This court affirmed Bishop’s convictions and sentences on appeal and likewise affirmed the trial court’s dismissal of Bishop’s first petition for post-conviction relief. *State v. Bishop*, 137 Ariz. 5, 667 P.2d 1331 (App. 1983). Bishop thereafter petitioned for post-conviction relief in 1984 and in 2010. The trial court denied relief in both proceedings and this court denied relief on review. *State v. Bishop*, No. 2 CA-CR 2010-0316-PR, ¶¶ 1, 5 (memorandum decision filed Feb. 22, 2011).

¶3 In April 2012, Bishop initiated another proceeding for post-conviction relief, claiming in his petition that the United States Supreme Court’s decisions in *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012) and *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012), entitled him to relief based on his trial counsel’s allegedly having failed to communicate adequately a plea offer to him. Concluding *Lafler* and *Frye* did not constitute a significant change in the law and Bishop’s claims therefore were precluded, the trial court summarily denied relief. *See* Ariz. R. Crim. P. 32.2. The court also denied Bishop’s request that counsel be appointed.

¶4 On review, Bishop contends the trial court erred in concluding his claim was precluded and in refusing to appoint counsel in this proceeding. And he raises several new claims of ineffective assistance of appellate and Rule 32 counsel. Because

Bishop did not raise those claims below, we do not address them on review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶5 As to Bishop’s other claims, the right to effective assistance of counsel in plea bargaining has long existed in this state,¹ *see State v. Donald*, 198 Ariz. 406, ¶ 14, 10 P.3d 1193, 1200 (App. 2000), and we therefore agree with the trial court’s conclusions. The court set forth its ruling on Bishop’s claims in a thorough, well-reasoned ruling, which we adopt. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993) (when trial court correctly rules on issues raised “in a fashion that will allow any court in the future to understand the resolution[, n]o useful purpose would be served by this court rehashing the trial court’s correct ruling in a written decision”). Thus, although we grant the petition for review, relief is denied.

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

CONCURRING:

/s/ Peter J. Eckerstrom

PETER J. ECKERSTROM, Presiding Judge

/s/ J. William Brammer, Jr.

J. WILLIAM BRAMMER, JR., Judge*

*A retired judge of the Arizona Court of Appeals authorized and assigned to sit as a judge on the Court of Appeals, Division Two, pursuant to Arizona Supreme Court Order filed August 15, 2012.

¹A significant change in the law “requires some transformative event, a clear break from the past.” *State v. Poblete*, 227 Ariz. 537, ¶ 8, 260 P.3d 1102, 1105 (App. 2011), *quoting State v. Shrum*, 220 Ariz. 115, ¶ 15, 203 P.3d 1175, 1178 (2009).