

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

ANTHONY M. MENDEZ,  
*Petitioner.*

No. 2 CA-CR 2016-0091-PR  
Filed May 16, 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NOT FOR PUBLICATION  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 Maricopa County  
No. CR2000003761  
The Honorable Bruce R. Cohen, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Diane Meloche, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

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James J. Haas, Maricopa County Public Defender  
By Tennie B. Martin, Deputy Public Defender, Phoenix  
and Mikel Steinfeld, Deputy Public Defender, Phoenix  
*Counsel for Petitioner*

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**MEMORANDUM DECISION**

Judge Espinosa authored the decision of the Court, in which Presiding Judge Howard and Judge Staring concurred.

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ESPINOSA, Judge:

¶1 Petitioner Anthony M. Mendez seeks review of the trial court's order denying him post-conviction relief, pursuant to Rule 32, Ariz. R. Crim. P. We grant review and, for the following reasons, deny relief.

¶2 After a jury trial, Mendez was convicted of a murder and attempted murder committed when he was seventeen years old. The trial court sentenced him to 10.5 years' imprisonment for the attempted murder, to be followed by life in prison without the possibility of release for twenty-five years. This court affirmed his convictions and sentences on appeal. *State v. Mendez*, No. 1 CA-CR 02-0433, ¶ 50 (memorandum decision filed July 10, 2003).

¶3 In August 2013, Mendez filed a notice of post-conviction relief in which he alleged the Supreme Court's decision in *Miller v. Alabama*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 2455 (2012), was a significant change in the law that entitled him to relief from his life sentence.<sup>1</sup> The trial court directed appointed counsel to file a brief

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<sup>1</sup> In *Miller*, the Supreme Court held that Alabama and Arkansas statutes violated the Eighth Amendment by mandating sentences of life imprisonment without parole for juvenile homicide offenders. \_\_\_ U.S. at \_\_\_, 132 S. Ct. at 2475.

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addressing the following two issues: (1) The “retroactive applicability of *Miller*” and (2) whether Mendez has “a presently cognizable claim for relief” under Rule 32, “in advance of the 25 year minimum sentence imposed.”

¶4 After the parties filed the ordered briefs but before the trial court held oral argument on these issues, our legislature passed H.B. 2593, which enacted A.R.S. § 13-716 and amended A.R.S. § 41-1604.09(I), establishing parole eligibility for juveniles sentenced to life imprisonment. See 2014 Ariz. Sess. Laws, ch. 156, §§ 2, 3; House Fact Sheet, H.B. 2593, 51st Leg., 2nd Reg. Sess. (Ariz. 2014). After oral argument, the trial court denied relief “with the condition that upon . . . § 13-716<sup>2</sup> and § 41-1604.09(I) becoming effective under Arizona law, the Arizona Department of Corrections shall set a specific date for [Mendez’s] parole eligibility.” In support of its ruling, the court stated its conclusions that *Miller* applied retroactively;<sup>3</sup> that “HB 2593,” which enacted § 13-716 and amended

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<sup>2</sup>Effective July 24, 2014, § 13-716 provides as follows:

Notwithstanding any other law, a person who is sentenced to life imprisonment with the possibility of release after serving a minimum number of calendar years for an offense that was committed before the person attained eighteen years of age is eligible for parole on completion of service of the minimum sentence, regardless of whether the offense was committed on or after January 1, 1994. If granted parole, the person shall remain on parole for the remainder of the person’s life except that the person’s parole may be revoked pursuant to § 31-415.

<sup>3</sup>The Supreme Court has since clarified that, as the trial court correctly concluded, *Miller* “announced a substantive rule of constitutional law” to be applied retroactively to all cases. *Montgomery v. Louisiana*, \_\_ U.S. \_\_, \_\_, 136 S. Ct. 718, 736 (2016); see also *State v. Valencia*, No. 2 CA-CR 2015-0151-PR, ¶ 17, 2016 WL 1203414 (Ariz. Ct. App. Mar. 28, 2016) (concluding *Montgomery*

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§ 41-1604.09(I), “resolves the residual issues” of whether Mendez’s “sentence violated the letter and spirit of *Miller*”; and that Mendez “is not yet eligible for release” from the sentence imposed.

¶5 On review, Mendez contends the trial court abused its discretion in denying his “request for a new sentencing, at which time [he] would have been able to raise substantive arguments regarding HB 2593.” According to Mendez, had the court granted his request, he would have argued that HB 2593 was not intended to apply retroactively, that its retroactive application would violate separation of powers and ex post facto principles, and that *Miller* requires a new sentencing proceeding.<sup>4</sup> He asks that we “vacate the trial court’s judgment, as it relates to the automatic resentencing by HB 2593, and remand this matter for a full resentencing.”

¶6 We review a denial of post-conviction relief for an abuse of discretion. *State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find none here. As the state suggests in its response, these same arguments, including the argument that resentencing is required, were considered and rejected in *State v. Vera*, 235 Ariz. 571, ¶¶ 21, 22, 26 & nn. 6-7, 334 P.3d 754, 759-61 & nn. 6-7 (App. 2014), *cert. denied*, \_\_\_ U.S. \_\_\_, 136 S. Ct. 121 (2015). *See also Montgomery v. Louisiana*, \_\_\_ U.S. \_\_\_, \_\_\_, 136 S. Ct. 718, 736 (2016) (suggesting “[a] State may remedy a *Miller* violation by permitting juvenile homicide offenders to be considered for parole, rather than by resentencing them”). The superior court is bound to follow our decision in *Vera*, *see State v. Patterson*, 222 Ariz. 574, ¶ 20, 218 P.3d 1031, 1037 (App. 2009), and Mendez has failed to persuade us any purpose would be served by remanding the case for a hearing. *See Ariz. R. Crim. P.* 32.6(c) (summary disposition appropriate when “no purpose would be served by any further proceedings”).

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“constitutes a significant change in Arizona law that is retroactively applicable”).

<sup>4</sup>The state does not dispute that Mendez raised his request to address such issues during oral argument in the trial court.

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¶7 The trial court did not abuse its discretion in denying Mendez's request for resentencing. Although we grant review, relief is denied.