

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

FEB 13 2013

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0443-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
RONALD LESLIE MURRAY,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR89000193

Honorable John F. Kelliher Jr., Judge

REVIEW GRANTED; RELIEF DENIED

Ronald Leslie Murray

Florence
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 Ronald Murray petitions this court for review of the trial court’s order summarily denying his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Murray has not met his burden of establishing such abuse here.

¶2 In 1989, Murray was convicted after a jury trial of kidnapping, sexual assault, robbery, and two counts of theft by control. The trial court sentenced him to a combination of concurrent and consecutive prison terms totaling forty-two years. After filing a direct appeal, Murray has filed at least a dozen petitions for post-conviction relief.

¶3 In April 2012, Murray filed his most recent notice of and petition for post-conviction relief, arguing his trial counsel had been ineffective in failing to inform him of a plea offer made by the state and that *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), constitute a significant change in the law permitting him to bring that claim in a successive petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.1(g), 32.2(a), (b). The trial court summarily dismissed his petition, concluding Murray had “failed to state specific facts why his . . . [p]etition . . . should be granted.” Murray then filed a motion for rehearing, which the court denied.

¶4 On review, Murray repeats his argument that counsel had been ineffective in failing to inform him of a plea offer by the state and that the claim is not subject to “waiver []or preclusion” because *Cooper* and *Frye* “establish[ed] the right of effective assistance of counsel to the plea bargaining analysis.” *See* Ariz. R. Crim. P. 32.1(g),

32.2(a), (b). Murray is correct that, in *Cooper* and *Frye*, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. *See Cooper*, ___ U.S. at ___, 132 S. Ct. at 1384; *Frye*, ___ U.S. at ___, 132 S. Ct. at 1407-08. But, even assuming without deciding that these decisions would apply to Murray's clearly final case, they nonetheless do not benefit him. *See State v. Febles*, 210 Ariz. 589, ¶¶ 8, 14-15 & n.4, 115 P.3d 629, 632, 634 & n.4 (App. 2005) (new constitutionally based rule applies to all cases not yet final on direct review the date case decided but has no retroactive application unless falls within narrow exceptions). Any such claim of ineffective assistance of trial counsel is precluded because it has long been the law in Arizona that a defendant is entitled to effective representation in the plea context, *see State v. Donald*, 198 Ariz. 406, ¶¶ 9, 14, 10 P.3d 1193, 1198, 1200 (App. 2000), and this issue could have been raised in one of Murray's numerous previous post-conviction proceedings, *see Ariz. R. Crim. P. 32.1(g), 32.2(a)*. *See also State v. Poblete*, 227 Ariz. 537, ¶ 8, 260 P.3d 1102, 1105 (App. 2011) (significant change in law "requires some transformative event, a clear break from the past"), *quoting State v. Shrum*, 220 Ariz. 115, ¶ 15, 203 P.3d 1175, 1178 (2009). Indeed, in a previous petition Murray raised a claim based on *Donald* that his counsel had failed to advise him of the sentencing consequences of a plea offer; we rejected that claim on review, concluding the trial court properly had found it waived and precluded. *State v. Murray*, Nos. 2 CA-CR 2008-0401-PR, CA-CR 2008-0404-PR, CA-CR 2008-0430-PR, CA-CR 2009-0049-PR, ¶¶ 2-3 (consolidated) (memorandum decision filed Jul. 21, 2009).

¶5 Murray claims *Donald* “did not apply to this case,” apparently because it was decided well after his convictions. But he does not identify, nor can we find, any basis to conclude that *Frye* and *Cooper* warrant relief if *Donald* did not. Accordingly, the trial court did not err in summarily dismissing Murray’s petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.6(c).

¶6 For the reasons stated, although review is granted, relief is denied.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge