

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

JUN 10 2013

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2013-0085-PR
	)	DEPARTMENT B
Respondent,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
JEROME E. ARNOLDI JR.,	)	the Supreme Court
	)	
Petitioner.	)	
_____	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR031033

Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines

Tucson  
Attorneys for Respondent

Jerome E. Arnoldi Jr.

Buckeye  
In Propria Persona

K E L L Y, Judge.

¶1 Petitioner Jerome Arnoldi Jr., 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). Arnoldi has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Arnoldi was convicted of twenty counts of sexual offenses involving his four minor daughters. The trial court imposed consecutive sentences, including eighteen consecutive life sentences. This court affirmed all but one of his convictions and remanded the case for resentencing on seven of the remaining convictions. *State v. Arnoldi*, 176 Ariz. 236, 243, 860 P.2d 503, 510 (App. 1993). Arnoldi has twice sought and been denied post-conviction relief, and this court denied relief on review of each proceeding. *See State v. Arnoldi*, No. 2 CA-CR 2007-0400-PR (memorandum decision filed June 26, 2008); *State v. Arnoldi*, Nos. 2 CA-CR 95-0136, 2 CA-CR 96-0344-PR (consolidated) (memorandum decision filed Jan. 29, 1997).

¶3 In July 2012, Arnoldi initiated a third proceeding for post-conviction relief, arguing in his petition that he had received ineffective assistance of counsel in relation to rejecting a plea offer made by the state and that the United States Supreme Court’s decision in *Missouri v. Frye*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1399 (2012) and *Lafler v. Cooper*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1376 (2012), constituted a significant change in the law entitling him to relief. The trial court concluded Arnoldi’s claims were precluded and summarily denied relief. It likewise denied Arnoldi’s subsequent motion for rehearing.

¶4 On review, Arnoldi again maintains that he received ineffective assistance in relation to his rejection of the plea offer and that *Frye* and *Lafler* entitle him to relief. But any such claim of ineffective assistance of 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 Arnoldi’s last post-conviction proceeding, *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). Therefore, although we grant the petition for review, we deny relief.

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

CONCURRING:

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

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