

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

STATE OF ARIZONA,
Respondent,

v.

JULIAN ADRIAN WYATT,
Petitioner.

No. 2 CA-CR 2013-0239-PR
Filed November 19, 2013

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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24

Petition for Review from the Superior Court in Pima County

No. CR20063253

The Honorable Howard Hantman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson

Counsel for Respondent

Julian Wyatt, Buckeye

In Propria Persona

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MEMORANDUM DECISION

Judge Espinosa authored the decision of the Court, in which Presiding Judge Kelly and Judge Eckerstrom concurred.

ESPINOSA, Judge:

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

¶2 After a jury trial, Wyatt was convicted of first-degree murder and sentenced to life in prison without the possibility of release for twenty-five years. This court affirmed his conviction and sentence on appeal. *State v. Wyatt*, No. 2 CA-CR 2008-0274 (memorandum decision filed July 28, 2009). We also denied relief on Wyatt's petitions for review from the trial court's dismissal of his first two post-conviction proceedings. *State v. Wyatt*, No. 2 CA-CR 2011-0288-PR (memorandum decision filed Feb. 8, 2012); *State v. Wyatt*, No. 2 CA-CR 2012-0302-PR (memorandum decision filed Nov. 15, 2012).

¶3 Wyatt filed his third petition for post-conviction relief in April 2012, relying on the United States Supreme Court's decisions in *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012) and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), and claiming he had received ineffective assistance of counsel in relation to plea bargaining. The trial court summarily denied relief, concluding Wyatt's claims were precluded.

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¶4 On review, Wyatt again contends he received ineffective assistance of counsel in the plea bargaining process and asserts his claims are exempt from preclusion because they are based on a significant change in the law. Wyatt is correct that, in *Lafler* and *Frye*, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. See *Lafler*, ___ U.S. at ___, 132 S. Ct. at 1384; *Frye*, ___ U.S. at ___, 132 S. Ct. at 1407-08. But 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). Thus, as the trial court correctly concluded, any such claim could have been raised in a previous collateral proceeding and is now precluded.¹ 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).

¶5 Therefore, although we grant the petition for review, relief is denied.

¹Wyatt raised claims of ineffective assistance in his previous Rule 32 proceedings. Thus, any additional claim of ineffective assistance is precluded unless it falls within an exception found in Rule 32.2(b). See *Swoopes*, 216 Ariz. 390, ¶¶ 23-25, 166 P.3d at 952-53 (when any claim of ineffective assistance raised in previous proceeding, subsequent claim precluded).