

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

VINCENT E. TAYLOR,
Petitioner.

No. 2 CA-CR 2013-0333-PR
Filed November 15, 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NOT FOR PUBLICATION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 Mohave County

No. CR20000996

The Honorable Steven F. Conn, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Vincent E. Taylor, Florence

In Propria Persona

STATE v. TAYLOR
Decision of the Court

MEMORANDUM DECISION

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

K E L L Y, Presiding Judge:

¶1 Petitioner Vincent Taylor 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). Taylor has not sustained his burden of establishing such abuse here.

¶2 In 2002, Taylor entered an *Alford* plea¹ to attempted kidnapping, a dangerous crime against children. Pursuant to a plea agreement, the trial court suspended the imposition of sentence, and placed Taylor on a five-year term of probation. Taylor subsequently admitted having violated the terms of his probation, and the trial court revoked probation, imposing a mitigated, eight-year prison sentence. In 2007 and 2011, Taylor sought and was denied post-conviction relief. Review of the trial court's decision was denied in the first proceeding, and Taylor's petition for review was dismissed as untimely in the second.

¶3 In 2012, Taylor filed another notice of post-conviction relief, asserting that "U.S. v. Cooper and U.S. v. Frye" constituted a significant change in the law entitling him to relief. The trial court summarily denied relief, noting it was unclear what Taylor's claim was and he had not included any citations to the cases on which he relied. In a motion for reconsideration, Taylor expanded on his argument, and the court denied the motion, ruling that Taylor could have raised a claim of ineffective assistance of counsel during plea bargaining in a previous collateral proceeding.

¹*N. Carolina v. Alford*, 400 U.S. 25 (1970).

STATE v. TAYLOR
Decision of the Court

¶4 On review, Taylor again asserts he received ineffective assistance of counsel in violation of the United States Supreme Court's rulings in *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012) and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012). Taylor 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). Therefore, as the trial court correctly concluded, any such claim could have been raised in a previous collateral proceeding and is now precluded. 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 To the extent Taylor also contends the trial court was required to appoint him counsel in the instant post-conviction proceeding, he is incorrect. Under Rule 32.4(c), Taylor is not entitled to appointment of counsel as this is neither a timely nor first proceeding for post-conviction relief. See *State v. McDonald*, 192 Ariz. 44, ¶ 7, 960 P.2d 644, 645 (App. 1998); see also *Osterkamp v. Browning*, 226 Ariz. 485, ¶¶ 7-21, 250 P.3d 551, 553-57 (App. 2011). Appointment of counsel was therefore within the discretion of the presiding judge, see Ariz. R. Crim. P. 32.4(c), and Taylor has not established how the court abused such discretion in declining to appoint counsel in this proceeding. Therefore, although we grant the petition for review, we deny relief.