IN THE
# ARIZONA COURT OF APPEALS
DIVISION TWO

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THE STATE OF ARIZONA,
*Respondent,*

*v.*

RONNIE HOWELL LYNCH,
*Petitioner.*

No. 2 CA-CR 2013-0336-PR
Filed November 12, 2013

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NOT FOR PUBLICATION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

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Petition for Review from the Superior Court in Maricopa County
No. CR1998011390
The Honorable Daniel G. Martin, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Ronnie H. Lynch, Florence

*In Propria Persona*

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**MEMORANDUM DECISION**

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Presiding Judge Vásquez concurred.

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M I L L E R, Judge:

**¶1** Ronnie Lynch petitions this court for review of the trial court's order summarily dismissing his successive notice of 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). Lynch has not met his burden of establishing such abuse here.

**¶2** Lynch was convicted after a jury trial of two counts of sexual conduct with a minor and one count each of sexual abuse, kidnapping, aggravated assault, transfer of marijuana to a minor, and possession of marijuana on or near school grounds. Lynch was sentenced to a combination of concurrent and consecutive prison terms totaling eighty-two years. We affirmed his convictions and sentences on appeal. *State v. Lynch*, No. 1 CA-CR 99-0975 (memorandum decision filed Jul. 25, 2000).

**¶3** Lynch has instituted post-conviction proceedings and been denied relief at least five times. In his most-recent proceeding, he argued newly discovered material facts concerning his efforts to change counsel during trial and his counsel's purported failure to explain the state's plea offer to him.

**¶4** As we understand his argument, Lynch asserted that the court rejected his requests for new counsel before receiving his letter detailing some of his concerns and alleged threats made by counsel, and thus the court's rejection of that request could not be considered an adjudication on the merits; therefore, the claim would not be subject to preclusion. In a section of his notice entitled "significant change in the law," Lynch further claimed counsel had failed to properly advise him concerning a plea offer by the state

and suggested his post-conviction counsel had been ineffective in failing to raise a claim of ineffective assistance of trial counsel. The trial court summarily dismissed the notice, concluding that his claim of ineffective assistance of trial counsel was precluded, his claim of ineffective assistance of post-conviction counsel was not cognizable, and he had not identified any newly discovered material facts.

**¶5** On review, Lynch argues he is entitled to an evidentiary hearing and reurges his preclusion argument. His claims of ineffective assistance of trial and appellate counsel clearly are precluded because he could have raised them in his first post-conviction proceeding. Ariz. R. Crim. P. 32.2(b). The claim of ineffective assistance of post-conviction counsel is not cognizable under Rule 32. *State v. Escareno-Meraz*, 232 Ariz. 586, ¶ 4, 307 P.3d 1013, 1014 (App. 2013).

**¶6** Lynch is correct that a claim of newly discovered material facts pursuant to Rule 32.1(e) is not necessarily subject to preclusion, *see* Ariz. R. Crim. P. 32.2(b), but we agree with the trial court that Lynch has not identified any material fact that can be characterized as newly discovered. Lynch asserts that he has only recently discovered the legal bases for his claims. Rule 32.1(e) creates an exception to the rule of preclusion based only on "newly discovered material facts" not new legal theories of which a defendant previously was unaware. *See State v. Saenz*, 197 Ariz. 487, ¶ 7, 4 P.3d 1030, 1032 (App. 2000) (to establish claim of newly discovered evidence, defendant must show "that the evidence was discovered after trial although it existed before trial; that it could not have been discovered and produced at trial through reasonable diligence; that it is neither cumulative nor impeaching; that it is material; and that it probably would have changed the verdict").

**¶7** For the first time on review, Lynch suggests that the United States Supreme Court's decision in *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), constitutes a significant change in the law pursuant to Rule 32.1(g) and thus that his claims of ineffective assistance of counsel concerning the state's plea offer are not precluded, *see* Ariz. R. Crim. P. 32.2(b). Even had Lynch raised this argument below, it does not warrant relief. In *Lafler*, the Supreme Court acknowledged a defendant has a right to effective

representation by counsel during plea negotiations. *See* ___ U.S. at ___, 132 S. Ct. at 1384. But that has long been the law in Arizona. *State v. Donald*, 198 Ariz. 406, ¶¶ 9, 14, 10 P.3d 1193, 1198-1200 (App. 2000). Accordingly, *Lafler* does not constitute a significant change in the law and Lynch's claim is precluded because he could have raised it in a previous post-conviction proceeding. *See* Ariz. R. Crim. P. 32.1(g), 32.2(a)(3); *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).

**¶8** For the reasons stated, review is granted but relief is denied.