

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

CHARLES LOYD WHITE SR.,
Petitioner.

No. 2 CA-CR 2013-0379-PR
Filed December 3, 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NOT FOR PUBLICATION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. CR16026

The Honorable Steven F. Conn, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Charles Loyd White Sr., Florence
In Propria Persona

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MEMORANDUM DECISION

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

ECKERSTROM, Judge:

¶1 Petitioner Charles White Sr. 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). White has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, White was convicted of kidnapping, child molestation, sexual exploitation of a minor, and two counts of sexual conduct with a minor. The trial court sentenced White to presumptive terms of seventeen years on the kidnapping, molestation, and sexual exploitation charges, and two presumptive terms of twenty years on the counts for sexual conduct with a minor. All sentences were to be served consecutively. White's convictions and sentences were affirmed on appeal. *State v. White*, No. 1 CA-CR 95-0369 (memorandum decision filed Apr. 16, 1996). White previously has sought and been denied post-conviction relief at least three times.

¶3 In his most recent notice of post-conviction relief, White asserted he was entitled to relief based on significant changes in the law, specifically the United States Supreme Court's recent decisions in *Martinez v. Ryan*, ___ U.S. ___, 132 S. Ct. 1309 (2012), and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012). The trial court dismissed the proceeding, concluding neither of these decisions constituted a significant change in the law, and noting that White had challenged his trial counsel's effectiveness pursuant to *State v. Donald*, 198 Ariz. 406, 10 P.3d 1193 (App. 2000), in a past proceeding.

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¶4 On review, White asserts the trial court abused its discretion in determining *Martinez* and *Lafler* did not constitute significant changes in the law and in denying him a *Donald* hearing. White is correct that, in *Lafler*, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. ___ U.S. at ___, 132 S. Ct. at 1384. But it has long been the law in Arizona that a defendant is entitled to effective representation in the plea context. See *Donald*, 198 Ariz. 406, ¶¶ 9, 14, 10 P.3d at 1198, 1200. Indeed, as the court noted, White raised a *Donald* claim in a past post-conviction relief proceeding. Accordingly, any such claim of ineffective assistance of trial counsel is precluded. See Ariz. R. Crim. P. 32.1(g), 32.2(a), (c) (claim precluded if reviewing court determines claim finally adjudicated or waived in previous collateral proceeding); *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 Likewise, this court has determined that the Court’s decision in *Martinez* is not a significant change in the law for purposes of Rule 32.1(g). *State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 3, 6, 307 P.3d 1013, 1014 (App. 2013). Therefore, we grant the petition for review, but deny relief.