IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

LARRY DEAN DEYOUNG,
Petitioner.

No. 2 CA-CR 2017-0005-PR
Filed February 17, 2017

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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Pinal County
No. S1100CR93018872
The Honorable Steven J. Fuller, Judge

REVIEW GRANTED; RELIEF DENIED

Larry Dean DeYoung, Buckeye
In Propria Persona

MEMORANDUM DECISION

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

H O W A R D, Presiding Judge:

¶1 Larry DeYoung seeks review of the trial court's rulings denying his untimely and successive notice of and petition for post-conviction relief, amended petition, and motion for rehearing. We will not disturb those orders unless the court clearly abused its discretion. *State v. Roseberry*, 237 Ariz. 507, ¶ 7, 353 P.3d 847, 848 (2015). DeYoung has not met his burden of demonstrating such abuse here.

¶2 After a jury trial, DeYoung was convicted of five counts of aggravated assault, two counts of attempted first-degree murder, one count of attempted second-degree murder, three counts of endangerment, five counts of misconduct involving a weapon, and one count each of possession of a dangerous drug and possession of drug paraphernalia. He was sentenced to concurrent and consecutive prison terms totaling 145 years. This court affirmed his convictions and sentences on appeal. *State v. DeYoung*, Nos. 2 CA-CR 96-0716, 2 CA-CR 99-0447-PR, 2 CA-CR 00-0358-PR (Ariz. App. Sept. 20, 2001) (consol. mem. decision). DeYoung has since sought and been denied post-conviction relief on numerous occasions before this proceeding, most recently in 2014. *State v. DeYoung*, No. 2 CA-CR 2014-0129-PR (Ariz. App. July 2, 2014) (mem. decision).

¶3 In 2016, in what DeYoung described as his eleventh petition for post-conviction relief, he asserted *Lafler v. Cooper*, 566 U.S. 156 (2012), *Missouri v. Frye*, 566 U.S. 133 (2012), and *Martinez v. Ryan*, 566 U.S. 1 (2012), constituted a significant change in the law pursuant to Rule 32.1(g), Ariz. R. Crim. P., thus permitting him to raise claims of ineffective assistance of trial, appellate, and post-

conviction counsel based on trial counsel's alleged failure to advise him of a plea offer from the state that would have resulted in a fifteen-year prison term. While that petition was pending, the court granted DeYoung leave to file an amended petition to raise a claim the state had violated *Brady v. Maryland*, 373 U.S. 83 (1963).

¶4 The trial court denied DeYoung's initial petition. DeYoung filed a motion for rehearing and an amended petition, in which he argued the state had failed to disclose exculpatory "internal affairs information" related to his case and claimed the state's violation had interfered with his ability to make an informed decision regarding the state's plea offer, citing Rule 32.1(e). The court denied DeYoung's motion for rehearing and amended petition, and this petition for review followed.

¶5 On review, DeYoung asserts, inter alia, that the trial court erred in rejecting his claims based on Rule 32.1(g) and *Brady*.[1] We agree with the trial court that DeYoung's claims warranted summary rejection. First, as we concluded in *State v. Escareno-Meraz*, 232 Ariz. 586, ¶¶ 4, 6, 307 P.3d 1013, 1014 (App. 2013), *Martinez* does not alter established Arizona law and non-pleading defendants, like DeYoung, are not entitled to the effective assistance of Rule 32 counsel.

¶6 In *Frye* and *Lafler*, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. *See Frye*, 566 U.S. at 142-43*; Lafler*, 566 U.S. at 162-63. But it has long been the law in Arizona that a defendant is

[1]Because they are not relevant to the trial court's correct decision to summarily deny DeYoung's claims for post-conviction relief, we do not address his arguments related to his objection to the trial court's grant of the Pinal County Attorney's motion to withdraw from the case, or his motion seeking sanctions for the state's purported violation of ethical rules. And, because he is not entitled to relief in any event, we need not address his various arguments directed at purported deficiencies in the state's response or the trial court's rulings.

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). Accordingly, *Lafler* and *Cooper* do not alter established Arizona law and any such claim of ineffective assistance of trial counsel should have been raised long ago. *See 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). Thus, the court did not err in summarily denying DeYoung's claims based on Rule 32.1(g).[2]

¶7 Nor did the trial court err in summarily rejecting DeYoung's claim based on *Brady*. As we understand this claim, DeYoung argues the state has withheld exculpatory evidence related to an investigation of the conduct of law enforcement officers in his case and the motion to withdraw by the Pinal County Attorney[3] based on a conflict of interest demonstrates it is in possession of that evidence. He asserts the information is material to his consideration of the plea offer from the state.

¶8 Pursuant to *Brady*, the state is required to disclose any evidence favorable to the accused and its failure to do so violates due process. *State v. O'Dell*, 202 Ariz. 453, ¶ 10, 46 P.3d 1074, 1078 (App. 2002). To raise a colorable claim of newly discovered evidence pursuant to Rule 32.1(e), a defendant must show the evidence "existed at the time of trial" but was discovered after trial, that he or she was "diligent in discovering the facts and bringing them to the court's attention," that the evidence is both relevant and not "simply . . . cumulative or impeaching," and that the evidence "would likely have altered the verdict, finding, or sentence if known

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[2]DeYoung states in his petition for review that he does not claim he recently discovered the plea offer or that his claim is otherwise based on Rule 32.1(e).

[3]The Pinal County Attorney withdrew because DeYoung, as part of his claims related to the plea agreement, had "alleg[ed] actions that can only be known and/or explained" by that office.

at the time of trial." *State v. Amaral*, 239 Ariz. 217, ¶ 9, 368 P.3d 925, 927 (2016); *see also* Ariz. R. Crim. P. 32.1(e).

¶9 Even assuming, without deciding, that DeYoung's *Brady* claim otherwise meets the requirements of Rule 32.1(e), his claim nonetheless fails.[4] He does not assert the evidence would have changed the result of his trial, only that he required the evidence to properly evaluate the state's plea offer. The only plea offer DeYoung has identified, however, is the purported offer for a fifteen-year prison term that is the heart of his claims based on Rule 32.1(g). Even assuming the offer existed, he has not explained how additional *Brady* materials would have been material to a decision to accept or reject that plea instead of proceeding to trial—particularly given that he avowed in his petition for post-conviction relief he would have accepted that plea "without hesitation" had he been aware of it. Thus, he has not established how the evidence would have altered the outcome of his case and his claim fails.

¶10 We grant review but deny relief.

[4]Based on the documents attached to DeYoung's filings below, it appears he was aware of the possibility exculpatory evidence had not been disclosed by at least 2002. He offers no explanation for his failure to raise this claim until 2016. *See* Ariz. R. Crim. P. 32.2(b).