IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOHN PIERRE BAKER,
Petitioner.

No. 2 CA-CR 2017-0024-PR
Filed April 25, 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NOT FOR PUBLICATION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 Pima County
No. CR057359002
The Honorable Casey F. McGinley, Judge Pro Tempore

REVIEW GRANTED; RELIEF DENIED

John P. Baker, Buckeye
In Propria Persona

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Staring and Judge Espinosa concurred.

M I L L E R, Judge:

¶1 Petitioner John Baker seeks review of the trial court's order dismissing his notice of post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P. We will affirm a trial court's ruling in a proceeding for post-conviction relief "absent a clear abuse of discretion." *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Baker has not sustained his burden of establishing such abuse here.

¶2 Baker was convicted in 1999 of conspiracy to commit child abuse, ten counts of child abuse, and two counts of kidnapping a minor under the age of fifteen; the trial court sentenced him to a total of 86.5 years in prison. This court affirmed the convictions and sentences on appeal. *State v. Baker*, No. 2 CA-CR 99-0222 (Ariz. App. Sept. 14, 2000) (mem. decision). Baker has sought and been denied post-conviction relief multiple times, and this court likewise denied relief on review on multiple occasions. *State v. Baker*, No. 2 CA-CR 2016-0310-PR (Ariz. App. Dec. 5, 2016) (mem. decision); *State v. Baker*, No. 2 CA-CR 2013-0278-PR (Ariz. App. Aug. 29, 2013) (mem. decision); *State v. Baker*, No. 2 CA-CR 2013-0154-PR (Ariz. App. Aug. 21, 2013) (mem. decision); *State v. Baker*, No. 2 CA-CR 2008-0012-PR (Ariz. App. Sept. 18, 2008) (mem. decision); *State v. Baker*, No. 2 CA-CR 2006-0428-PR (Ariz. App. Feb. 28, 2007) (mem. decision); *State v. Baker*, No. 2 CA-CR 2005-0366-PR (Ariz. App. Jan. 25, 2007) (mem. decision).

¶3 In May 2015, Baker again initiated a proceeding for post-conviction relief, filing a notice of post-conviction relief and a petition for post-conviction relief on the same date. He argued he was entitled to relief based on "another inmate's release" purportedly pursuant to

"application of" *Missouri v. Frye*, 566 U.S. 133 (2012), and *Lafler v. Cooper*, 566 U.S. 156 (2012). Baker alleged that like the defendants in those cases, his attorney had failed to inform him of an offered plea. He further argued federal law dictated he could not have been found guilty of kidnapping his victims because he was their legal guardian, citing only the Fourteenth Amendment to the United States Constitution. The trial court noted it had received both documents and summarily dismissed the notice, concluding Baker had "failed to establish that his untimely, successive Notice [wa]s not subject to preclusion."

¶4 On review, Baker asserts the trial court "did not review" his petition and claims he should have been allowed to file an amended notice. But Rule 32.2(b) requires a defendant in a successive proceeding such as this one to "set forth the substance of the specific exception and the reasons for not raising the claim in the previous petition." If the defendant does not do so, the trial court is to "summarily dismiss[]" the notice. Ariz. R. Crim. P. 32.2(b). No provision is made for amendment of the notice. *Id.* "A petitioner must comply strictly with rule 32 by asserting substantive grounds which bring him within the provisions of the rule in order to be entitled to any relief." *State v. Manning*, 143 Ariz. 139, 141, 692 P.2d 318, 320 (App. 1984).

¶5 We reject Baker's claim that we should remand solely on the ground that the trial court failed to consider his petition for post-conviction relief. It appears, based on the court's ruling entered on January 13, 2017, that the court did consider the petition, as it noted it in its ruling.[1] Even if it did not, however, because Baker failed to meet the requirements of Rule 32.2(b), the court was entitled to dismiss the notice pursuant to that rule.

¶6 Furthermore, we agree with the trial court that the claims Baker set forth are precluded. He cited no authority in support of his

[1]The court also issued an order in December 2016 dismissing Baker's notice on essentially the same grounds included in its January 2017 ruling.

claim about federal kidnapping law, but in any event, a claim that a guardian cannot kidnap his or her ward could have been raised on appeal. *See* Ariz. R. Crim. P. 32.2(a)(3). And Baker did not establish such a principle constitutes a significant change in the law entitling him to relief pursuant to Rule 32.1(g).

¶7 His claim relating to *Frye* and *Lafler* is also precluded. In those cases, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. *See Lafler*, 566 U.S. at 162; *Frye*, 566 U.S. at 143-144. 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). Accordingly, any such claim of ineffective assistance of trial counsel is precluded. *See* Ariz. R. Crim. P. 32.1(g), 32.2(a)(2) (claim precluded if finally adjudicated in previous collateral proceeding), 32.2(c) (any court on review may determine claim precluded); *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 Finally, to the extent Baker contends he is entitled to relief solely on the outcome of another proceeding in superior court, we reject the claim. "[T]he Fourteenth Amendment does not 'assure uniformity of judicial decisions . . . [or] immunity from judicial error.'" *Beck v. Washington*, 369 U.S. 541, 554-55 (1962), *quoting Milwaukee Electric Ry. & Light Co. v. Wisconsin ex rel. Milwaukee*, 252 U.S. 100, 106 (1920) (alterations in *Beck*).

¶9 For these reasons, although we grant the petition for review, we deny relief.