

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JAMES ELLIOT ROMEO,
Petitioner.

No. 2 CA-CR 2020-0222-PR
Filed February 9, 2021

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NOT FOR PUBLICATION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. 31.19(e).

Petition for Review from the Superior Court in Cochise County
Nos. S0200CR201000832 and S0200CR201000869
The Honorable Timothy B. Dickerson, Judge

REVIEW GRANTED; RELIEF DENIED

James E. Romeo, Florence
In Propria Persona

STATE v. ROMEO
Decision of the Court

MEMORANDUM DECISION

Judge Brearcliffe authored the decision of the Court, in which Presiding Judge Eppich and Chief Judge Vásquez concurred.

BREARCLIFFE, Judge:

¶1 Petitioner James Romeo 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 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 (App. 2007). Romeo has not sustained his burden of establishing such abuse here.

¶2 After a jury trial on charges in two cases consolidated for trial, Romeo was convicted on five counts of armed robbery, five counts of aggravated robbery, nine counts of kidnapping, and twelve counts of aggravated assault. This court affirmed his convictions and sentences on appeal. *State v. Romeo*, Nos. 2 CA-CR 2011-0275, 2 CA-CR 2011-0276 (Ariz. App. May 4, 2012) (consol. mem. decision).

¶3 Romeo thereafter sought post-conviction relief, arguing in his petition that he had received ineffective assistance of counsel and raising claims of trial error and prosecutorial misconduct. The trial court summarily dismissed the petition. In 2015, Romeo again filed a notice for post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record and was “unable to find a tenable issue to submit” in a Rule 32 proceeding. Romeo did not timely file a supplemental pro se petition.

¶4 In July 2017, Romeo filed a motion asking for an evidentiary hearing, “restoration” of his appeal rights, modification of his sentence, and a new trial. In the motion, he cited Rule 32.1, argued the trial court had “abused its discretion by not engaging in sufficient inquiry into the conflict” with his trial counsel or replacing counsel, claimed the prosecutor had committed misconduct, and raised claims of ineffective assistance of counsel. He also asserted his appellate counsel had been ineffective. The trial court denied the motion.

¶5 Romeo filed another notice of post-conviction relief in August 2020, citing *Lafler v. Cooper*, 566 U.S. 156 (2012), and *Missouri v. Frye*, 566 U.S.

STATE v. ROMEO
Decision of the Court

134 (2012), and asserting they were “Newly Discovered,” as he “had never seen or reviewed” them before another prisoner showed them to him. He further explained that he had obtained a transcript of a July 2011 settlement conference and asked the trial court “to issue a scheduling order” so that he could “Brief” his claim based on *Lafler* and *Frye*. The court summarily dismissed the notice, explaining that Rule 32.1(e) required newly discovered *facts*, not law, and that *Lafler* and *Frye* did not constitute a significant change in the law. The court also denied Romeo’s subsequent motion for rehearing.

¶6 On review, Romeo contends the trial court abused its discretion in dismissing his petition, again asserting he is entitled to relief based on *Lafler* and *Frye*. In *Lafler* and *Frye*, the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. See *Lafler*, 566 U.S. at 162-63; *Frye*, 566 U.S. at 142-43. 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 (App. 2000). Accordingly, any such claim of ineffective assistance of trial counsel is precluded. See *State v. Poblete*, 227 Ariz. 537, ¶ 8 (App. 2011) (significant change in law “requires some transformative event, a clear break from the past” (quoting *State v. Shrum*, 220 Ariz. 115, ¶ 15 (2009))). Further, as the trial court correctly ruled, Rule 32.1(e) permits relief on the basis of “newly discovered material facts,” not the recent discovery of legal authority or legal claims. See generally *State v. Saenz*, 197 Ariz. 487, ¶ 7 (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”). Many of Romeo’s claims also could have been or, as outlined above, were raised in his previous notices and petitions. Such claims are also precluded because they were or could have been adjudicated in previous proceedings. See Ariz. R. Crim. P. 32.2(a)(2), (3). The court therefore did not abuse its discretion in dismissing Romeo’s notice.

¶7 We grant the petition for review but deny relief.