

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

MICHAEL WAYNE DAVIS,  
*Petitioner.*

No. 2 CA-CR 2022-0013-PR  
Filed June 8, 2022

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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NOT FOR PUBLICATION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)(1); Ariz. R. Crim. P. 31.19(e).*

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Petition for Review from the Superior Court in Pima County

No. CR019301

The Honorable Kyle A. Bryson, Judge

**REVIEW GRANTED; RELIEF DENIED**

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Michael W. Davis, Douglas  
*In Propria Persona*

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MEMORANDUM DECISION

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

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E P P I C H, Presiding Judge:

¶1 Michael Davis seeks review of the trial court's ruling summarily dismissing his successive petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that ruling unless the court abused its discretion. *See State v. Martinez*, 226 Ariz. 464, ¶ 6 (App. 2011). Davis has not met his burden of establishing such abuse here.

¶2 After a 1986 jury trial, Davis was convicted of first-degree murder, first-degree burglary, and kidnapping, and the trial court imposed the death penalty. Davis sought post-conviction relief, and the court set aside his convictions and ordered a new trial. After a 1994 retrial, Davis was convicted of first-degree felony murder and second-degree burglary. The trial court imposed concurrent sentences of life imprisonment without the possibility of release for twenty-five years for murder and 7.5 years for burglary. This court affirmed those convictions and sentences on appeal. *State v. Davis*, No. 2 CA-CR 95-0207 (Ariz. App. Dec. 12, 1996) (mem. decision). Thereafter, Davis sought post-conviction relief at least three times, but the trial court denied relief in each proceeding.

¶3 In November 2021, Davis simultaneously filed a notice of and petition for post-conviction relief. Citing Rule 32.1(g), Davis argued that he had "recently become aware" of *State v. Phillips*, 202 Ariz. 427 (2002), where, according to Davis, the Arizona Supreme Court held that "a defendant is not liable for all acts of an accomplice, but only those acts the defendant agreed or intended to help plan or commit." He also relied on *State v. Johnson*, 215 Ariz. 28 (App. 2007), for the proposition that "to be an accomplice, a person's first connection with a crime must be prior to or during its commission; it cannot be after the commission of the offense." Davis maintained that he was convicted under a theory of "strict vicarious liability" and that if *Phillips* and *Johnson* had "been available" at his 1994 retrial, "it's unlikely that [he] would have been convicted of" first-degree felony murder.

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¶4 The trial court summarily dismissed both Davis’s notice and petition. Relying on *State v. Shrum*, 220 Ariz. 115, ¶ 15 (2009), the court explained that a significant change in the law under Rule 32.1(g) requires a “transformative event” or “a clear break from the past.” The court determined that neither *Phillips* nor *Johnson* “constitutes a change in the law.” This petition for review followed.

¶5 On review, Davis repeats his claim that *Phillips* and *Johnson* constitute a significant change in the law applicable to his case. Davis maintains that he is “entitled to relief” because “his jury did not find accomplice liability.” He further asserts that the trial court “failed to analy[z]e [his] argument that the change affected the circumstances that lead to [his] conviction.”

¶6 Before granting relief under Rule 32.1(g), the trial court must determine whether “there has been a significant change in the law,” whether that change is “applicable to the defendant’s case,” and whether that change “would probably overturn the defendant’s judgment or sentence.” See *State v. Werderman*, 237 Ariz. 342, ¶ 6 (App. 2015) (if new case is not significant change in law, defendant is not entitled to relief and court need not evaluate whether new case should apply retroactively to defendant). Although Rule 32.1(g) does not define “a significant change in the law,” it plainly “requires some transformative event, a ‘clear break from the past.’” *Shrum*, 220 Ariz. 115, ¶ 15 (quoting *State v. Slemmer*, 170 Ariz. 174, 182 (1991)). Examples of such a change include “when an appellate court overrules previously binding case law” or when there has been a “statutory or constitutional amendment representing a definite break from prior law.” *Id.* ¶¶ 16-17.

¶7 As relevant here, both *Phillips* and *Johnson* are based upon our accomplice liability statutes, A.R.S. § 13-301 and A.R.S. § 13-303. However, those statutes remained unchanged from at least 1980—before Davis committed the offenses at issue here—through 2008—after *Phillips* and *Johnson* were decided. See 2008 Ariz. Sess. Laws, ch. 296, §§ 1, 2; 1980 Ariz. Sess. Laws, ch. 229, § 4; 1977 Ariz. Sess. Laws, ch. 142, § 43. Davis has not identified any applicable binding precedent overruled by *Phillips* or *Johnson*, and we have found none. Instead, the courts in *Phillips* and *Johnson* simply interpreted our accomplice liability statutes. See *Shrum*, 220 Ariz. 115, ¶ 21 (“An appellate decision is not a significant change in the law simply because it is the first to interpret a statute.”). The trial court thus correctly determined that neither *Phillips* nor *Johnson* constitutes a significant change in the law under Rule 32.1(g). And, as such, the court did not need to determine whether those cases applied to Davis.

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¶8 Davis also argues that *State v. Bennett*, 213 Ariz. 562 (2006), constitutes a significant change in the law under Rule 32.1(g). However, Davis did not raise this argument below. We therefore do not address it. See Ariz. R. Crim. P. 32.16(c)(2)(B) (petition for review shall include “issues the trial court decided that the defendant is presenting for appellate review”); *State v. Ramirez*, 126 Ariz. 464, 468 (App. 1980) (appellate court need not address claims not raised below).

¶9 Finally, to the extent Davis asks this court to grant him relief based on “a miscarriage of justice” and “the 35 years [he has] spent incarcerated,” we cannot do so. “A petitioner must comply strictly with [R]ule 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 (App. 1984). Our jurisdiction is limited to reviewing cognizable claims. *Id.*; see also Ariz. R. Crim. P. 32.1 (listing grounds for relief). Davis’s claim, assuming it was raised below, does not fit within the grounds identified in Rule 32.1.

¶10 Accordingly, we grant review but deny relief.