

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

JUAN ANTONIO GAMEZ,  
*Petitioner.*

No. 2 CA-CR 2013-0401-PR  
Filed January 22, 2014

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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NOT FOR PUBLICATION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); Ariz. R. Crim. P. 31.24.*

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Petition for Review from the Superior Court in Pima County

No. CR058231

The Honorable Brenden J. Griffin, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

Barbara LaWall, Pima County Attorney  
By Jacob R. Lines, Deputy County Attorney, Tucson  
*Counsel for Respondent*

Juan Antonio Gamez, Buckeye  
*In Propria Persona*

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MEMORANDUM DECISION

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

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ESPINOSA, Judge:

¶1 Juan Gamez petitions this court for review of the trial court's order 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 clearly has abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Gamez has not met his burden of demonstrating such abuse here.

¶2 Gamez was convicted after a jury trial of first-degree murder and sentenced to life imprisonment. We affirmed his conviction and sentence on appeal. *State v. Gamez*, No. 2 CA-CR 98-0514 (memorandum decision filed Dec. 30, 1999). He sought post-conviction relief and, in 2001, appointed counsel filed a notice stating she had reviewed the record but found no arguable claims to raise. The trial court dismissed the proceeding when Gamez failed to file a supplemental brief in propria persona. Gamez nonetheless sought review of that dismissal, raising for the first time claims of manifest injustice, prosecutorial misconduct, and denial of his due process rights. We granted review but denied relief. *State v. Gamez*, No. 2 CA-CR 01-0365-PR (memorandum decision filed Jan. 31, 2002).

¶3 In July 2013, Gamez filed a notice of and petition for post-conviction relief, raising various issues related to the jury's premeditation finding, including that the trial court had given an improper premeditation instruction. He further claimed that his trial counsel had been ineffective in failing to inform him of a plea offer by the state, arguing he could raise this claim pursuant to Rule 32.1(g) because *Lafler v. Cooper*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1376 (2012),

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was a significant change in the law establishing that counsel was required to inform him of the state's plea offer.

¶4 Gamez also argued that his trial, appellate, and Rule 32 counsel had been ineffective in various ways and alleged several errors by the trial court during trial and his first Rule 32 proceeding. He further claimed he was entitled to raise his claims in an untimely petition because he had only recently received "some of the records . . . and [had] just learned about the 2012 U.S. Supreme Court rulings." Gamez included with his notice and petition a motion seeking the appointment of "two attorneys" pursuant to Rule 6.8, Ariz. R. Crim. P., to "help him with the Rule 32 pleadings" and asserted in his petition he had been entitled to multiple counsel throughout his trial and post-conviction proceedings.

¶5 The trial court summarily dismissed Gamez's notice and petition, noting that Gamez had provided "nothing that facially substantiates any merit to his asserted claims" and that Gamez was not constitutionally entitled to effective counsel in post-conviction proceedings. It also denied his request for counsel. This petition for review followed.

¶6 On review, Gamez relies on *Martinez v. Ryan*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1309 (2012), to assert the trial court erred in concluding he was not entitled to the effective assistance of Rule 32 counsel. But we determined in *State v. Escareno-Meraz* that *Martinez* did not alter established Arizona law that a non-pleading defendant, like Gamez, was not constitutionally entitled to effective counsel in post-conviction proceedings. 232 Ariz. 586, ¶¶ 4-6, 307 P.3d 1013, 1014 (App. 2013). And, although Gamez asserts his claims are not subject to preclusion because they are of "constitutional magnitude," he does not cite any supporting authority or develop any meaningful argument to support this assertion; we therefore do not address it. See *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (insufficient argument waives claim on review).

¶7 He further relies on *Massaro v. United States*, 538 U.S. 500 (2003), to assert there is no time limit for collateral attacks on a conviction based on the ineffective assistance of counsel. Nothing in

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that case, however, supports that proposition. The Court determined only that a claim of ineffective assistance of counsel could be raised on collateral review even when not raised on direct appeal. *Id.* at 508-09. It did not suggest that such claims need not otherwise be timely.

¶8 Gamez also argues his claims are not subject to preclusion pursuant to Rule 32.1(e) and (g). He is correct that claims of newly discovered evidence pursuant to Rule 32.1(e) and claims based on a significant change in the law pursuant to Rule 32.1(g) are not necessarily subject to preclusion. Ariz. R. Crim. P. 32.2(b). But he identifies no significant change in the law applicable to his case. As we have explained, *Martinez* does not apply. And, despite Gamez's contrary assertion below, *Lafler* is not a significant change in Arizona law. 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 *State v. Donald*, 198 Ariz. 406, ¶¶ 9, 14, 10 P.3d 1193, 1198, 1200 (App. 2000); see also *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).

¶9 Nor does Gamez identify any newly discovered evidence. He asserted below that he had only recently obtained his case materials. But, he does not contend that newly discovered material facts were contained in those materials regardless of when he received them. See Ariz. R. Crim. P. 32.1(e)(2). Thus, the trial court did not err in rejecting his claim of newly discovered evidence.

¶10 Finally, Gamez asserts he was entitled to two attorneys throughout his trial, appeal, and post-conviction proceedings pursuant to Rule 6.8, Ariz. R. Crim. P. First, it is Rule 6.2, not Rule 6.8, that requires two attorneys be appointed for capital trial proceedings. But that rule applies only to capital defendants – those who face the death penalty. Gamez has not identified anything in the record suggesting he faced the death penalty at trial and, in any

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event, the claim is precluded because he did not raise it on appeal. And, even had the death penalty been imposed, Gamez would not have been entitled to multiple counsel on appeal or in post-conviction proceedings. *See* Ariz. R. Crim. P. 6.6, 32.4(c)(1).

¶11 For the reasons stated, although review is granted, relief is denied.