

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

EARL FELTON CRAGO JR.,
Petitioner.

No. 2 CA-CR 2013-0402-PR
Filed March 11, 2014

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NOT FOR PUBLICATION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.

Petition for Review from the Superior Court in Cochise County

No. CR94000471

The Honorable Wallace R. Hoggatt, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Earl Crago Jr., Buckeye
In Propria Persona

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MEMORANDUM DECISION

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

H O W A R D, Chief Judge:

¶1 Petitioner Earl Crago Jr. seeks review of the trial court’s order denying his petition for 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, 166 P.3d 945, 948 (App. 2007). The court’s order reflects a thorough review of the record, a detailed analysis of Crago’s arguments, and a well-reasoned conclusion. Crago has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Crago was convicted of first-degree murder, and the trial court sentenced him to a term of life imprisonment without the possibility of release for twenty-five years. We affirmed Crago’s conviction and sentence on appeal, denied relief in part on a consolidated petition for review of the denial of his first petition for post-conviction relief, and remanded for an evidentiary hearing on two claims of ineffective assistance of counsel. *State v. Crago*, Nos. 2 CA-CR 95-0488, 2 CA-CR 98-0230-PR, 11-15 (consolidated) (memorandum decision filed Mar. 18, 1999). We subsequently denied relief on Crago’s petition for review of the denial of post-conviction relief after the evidentiary hearing. *State v. Crago*, No. 2 CA-CR 00-0259-PR (memorandum decision filed Mar. 13, 2001). We also denied relief on four more petitions for review of the denial of post-conviction relief. *State v. Crago*, No. 2 CA-CR 2011-0162-PR (memorandum decision filed Sept. 9, 2011); *State v. Crago*, No. 2 CA-CR 2008-0396-PR (memorandum decision filed May 12, 2009); *State v. Crago*, No. 2 CA-CR 2004-0224-PR (decision order filed Mar. 29, 2005); *State v. Crago*, No. 2 CA-CR 01-0381-PR (memorandum decision filed Feb. 19, 2002).

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¶3 In July 2012, Crago initiated a sixth proceeding for post-conviction relief, and appointed counsel filed a notice stating he had reviewed the record and was “unable to find any claims for relief to raise in this post-conviction relief proceeding.” In a supplemental petition, however, Crago argued that the United States Supreme Court’s decision in *Lafler v. Cooper*, ___ U.S. ___, 132 S.Ct. 1376 (2012), was a significant change in the law which entitled him to relief. The trial court summarily denied relief.

¶4 On review, Crago maintains the trial court abused its discretion in rejecting his claim.¹ Crago is correct that, in *Lafler* and *Missouri v. Frye*, ___ U.S. ___, 132 S.Ct. 1399 (2012), the Supreme Court acknowledged a defendant has a right to effective representation by counsel during plea negotiations. See *Lafler*, ___ U.S. at ___, 132 S.Ct. at 1384; *Frye*, ___ U.S. at ___, 132 S.Ct. at 1407-08. 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). Crago therefore could have raised such a claim in one of his previous petitions, and, accordingly, any such claim of ineffective assistance of trial counsel is precluded. See Ariz. R. Crim. P. 32.1(g), 32.2(a)(3); *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.*

¹Crago makes several new arguments on review. This court will not consider for the first time on review matters that have neither been presented to, nor ruled on by, the trial court. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980); see also Ariz. R. Crim. P. 32.9(c)(1)(ii) (petition for review shall contain “[t]he issues which were decided by the trial court and which the defendant wishes to present” for review). And, because we conclude the trial court properly denied relief on Crago’s petition for the reason stated in this decision, we do not address all aspects of the court’s decision. Cf. *State v. Perez*, 141 Ariz. 459, 464, 687 P.2d 1214, 1219 (1984) (appellate court is obliged to affirm trial court’s ruling if result legally correct for any reason).

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Shrum, 220 Ariz. 115, ¶ 15, 203 P.3d 1175, 1178 (2009). Indeed, Crago noted in his petition below that he had raised a claim about his sentence and the proposed plea bargain in his last petition, but that the *Donald* issue was not raised therein.

¶5 Furthermore, Crago has raised ineffective assistance of counsel claims in his previous Rule 32 proceedings, and is therefore precluded from raising such a claim here. *Stewart v. Smith*, 202 Ariz. 446, 450, 46 P.2d 1067, 1071 (2002) (“[I]f a petitioner asserts ineffective assistance of counsel at sentencing, and, in a later petition, asserts ineffective assistance of counsel at trial, preclusion is required without examining facts. The ground of ineffective assistance of counsel cannot be raised repeatedly.”). Therefore, we cannot say the trial court abused its discretion in denying relief on Crago’s claim.

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