

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

JOSE J. RODRIGUEZ,
Petitioner.

No. 2 CA-CR 2013-0526-PR
Filed April 7, 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NOT FOR PUBLICATION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 Maricopa County

No. CR2000011108

The Honorable Robert L. Gottsfield, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Jose J. Rodriguez, Phoenix
In Propria Persona

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MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Chief Judge Howard and Judge Brammer¹ concurred.

M I L L E R, Judge:

¶1 After a jury trial, petitioner Jose Rodriguez was convicted of aggravated assault, attempted armed robbery, first-degree murder, armed robbery, and unlawful flight from a law enforcement vehicle. This court affirmed the convictions and sentences on appeal after he challenged the natural life term of imprisonment for murder. *State v. Rodriguez*, No. 1 CA-CR 02-0199 (memorandum decision filed Feb. 25, 2003). In this petition for review, he contends the trial court erred in summarily dismissing the notice of and petition for post-conviction relief he filed on September 24, 2012, pursuant to Rule 32, Ariz. R. Crim. P., in his third post-conviction proceeding. “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).

¶2 In its November 2012 minute entry ruling, the trial court correctly identified the claims Rodriguez raised in the petition filed in this successive proceeding. The court found the challenges to the sentences and the claims of ineffective assistance of trial and appellate counsel precluded.² The court also rejected his claim that

¹The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty and is assigned to serve on this case pursuant to orders of this court and the supreme court.

²Rodriguez contends for the first time in this court that he rejected a plea based on ineffective assistance of counsel. He appears to refer to *Lafler v. Cooper*, ___ U.S. ___, ___, 132 S. Ct. 1376, 1391 (2012) (deficient performance of counsel causing rejection of more

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he was entitled to relief pursuant to Rule 32.1(g). The court found he had not shown how *Graham v. Florida*, 560 U.S. 48 (2010), and *Miller v. Alabama*, ___ U.S. ___, 132 S. Ct. 2455 (2012), were significant changes in the law that would apply to him and entitle him to relief from his natural life prison term.³ Rodriguez has not sustained his burden on review of establishing the court abused its discretion by finding he failed to establish a basis for granting relief on any ground⁴ and dismissing his petition summarily. The record and the applicable law support the court's ruling, therefore we adopt it. *State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993).

¶3 We grant Rodriguez's petition for review but deny relief for the reasons stated.

favorable plea offer constitutes ineffective assistance of counsel), but did not present the argument or facts to the trial court. We will not address arguments not made to the trial court. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

³In *Graham*, the Supreme Court held that sentencing a juvenile offender to life in prison for a non-homicide offense violated the Eighth Amendment because the sentence essentially was a natural-life term; only executive clemency, not parole, was available in Florida for seeking early release. 560 U.S. at 57, 82. Similarly, in *Miller* the Supreme Court held that mandatory life terms of imprisonment without the possibility of parole or automatic natural life terms for juvenile offenders violated the Eighth amendment. 132 S. Ct. at 2464, 2469, 2475. Rodriguez was not a juvenile when he committed first-degree murder. Although Rodriguez contends his mental retardation makes him the functional equivalent of a juvenile, he cites no authority for the proposition that *Miller* and *Graham* apply to persons found to be mentally retarded.

⁴To the extent Rodriguez suggests he had either a defense based on mental illness or it was a mitigating circumstance the trial court did not consider adequately at sentencing, he fails to establish the court abused its discretion by summarily denying relief on these claims as well. They clearly are precluded. *See Ariz. R. Crim. P. 32.2(a)(3)*.