

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

DONALD WAYNE HUGGINS,
Petitioner.

No. 2 CA-CR 2014-0155-PR
Filed July 16, 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NOT FOR PUBLICATION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 Gila County
Nos. S0400CR960057 and S0400CR960091 (Consolidated)
The Honorable Robert Duber II, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Bradley D. Beauchamp, Gila County Attorney
By June Ava Florescue, Deputy County Attorney, Globe
Counsel for Respondent

Donald Wayne Huggins, Florence
In Propria Persona

STATE v. HUGGINS
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Miller authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Espinosa concurred.

M I L L E R, Presiding Judge:

¶1 Donald Huggins seeks review of the trial court's order summarily dismissing his petition for writ of habeas corpus. 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). We grant review but deny relief.

¶2 Huggins was convicted after a 1996 jury trial of possession of a dangerous drug for sale, transportation of a dangerous drug for sale, possession of a narcotic drug, transfer of a narcotic drug, participation in a criminal syndicate, and manslaughter. He was sentenced to a combination of concurrent and consecutive, mitigated and presumptive prison terms, including a term of life imprisonment without the possibility of release for twenty-five years. We affirmed his convictions and sentences on appeal. *State v. Huggins*, Nos. 2 CA-CR 97-0356, 2 CA-CR-0357 (consolidated) (memorandum decision filed Feb. 9, 1999).

¶3 Huggins sought post-conviction relief for the first time in 2002, raising several claims, including that his trial counsel had failed to inform him about a plea offer from the state. After an evidentiary hearing on the latter claim, the trial court denied relief on all Huggins's claims.¹ We denied relief on review. *State v. Huggins*, No. 2 CA-CR 2008-0280-PR (memorandum decision filed Mar. 24, 2009).

¹In a separate post-conviction proceeding, Huggins also raised a sentencing claim. The trial court denied relief, and Huggins did not seek review of the court's ruling.

STATE v. HUGGINS
Decision of the Court

¶4 In 2013, Huggins filed a petition for writ of habeas corpus, with an accompanying memorandum in which he argued, pursuant to Rule 32.1(g), that the recent Supreme Court decisions of *Missouri v. Frye*, ___ U.S. ___, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, ___ U.S. ___, 132 S. Ct. 1376 (2012), constitute significant changes in the law that permit him to raise an untimely claim of ineffective assistance of counsel during the plea bargain process.

¶5 As we understand the arguments raised in the petition filed below, Huggins acknowledged that he had been aware of a plea offer from the state but argued counsel had been unable to properly inform him of the benefits of accepting the offer because discovery had not been completed. He also appeared to assert that his post-conviction counsel was ineffective in failing to “object[]” to the plea because “all discovery had not been fully disclosed,” purportedly in violation of Rule 15.8, Ariz. R. Crim. P.

¶6 He additionally claimed there had been a second plea offer by the state, which he first discovered during his clemency board hearing. He acknowledges that this argument was raised in his previous Rule 32 proceeding, but asserted that *Lafler* and *Frye* “modifie[d]” the applicable standard, requiring “counsel to disclose any and all pleas[] to defendant before[] or during trial.” Correctly treating Huggins’s petition as raising claims pursuant to Rule 32.1, see Ariz. R. Crim. P. 32.3, the trial court summarily denied relief, finding the claims precluded and noting that Huggins’s “pleading is neither timely nor is the change in the law which occurred in 2012 retroactive to [his] case.”

¶7 On review, Huggins appears to restate his claims.² He additionally insists he only discovered the second plea offer at his

²Huggins additionally claims the trial court “show[ed] bias” because it ruled on his claims before he filed his reply after the state filed its response. The state responded to Huggins’s petition on February 11, 2014, and the court ruled on Huggins’s petition twenty days later. The record does not indicate, however, when Huggins received the state’s response, so we cannot determine whether the

STATE v. HUGGINS
Decision of the Court

clemency board hearing and the transcript of that hearing therefore is “newly discovered evidence.” *See* Ariz. R. Crim. P. 32.1(e). Thus, he asserts, he is entitled to an evidentiary hearing.

¶8 In an untimely proceeding like the one before us, a defendant may raise a claim of a significant change in the law. Ariz. R. Crim. P. 32.1(g), 32.4(a). To obtain relief, Huggins must show not only that there has been a significant change in the law, but that it “appl[ies] to [his] case [and] would probably overturn [his] conviction or sentence.” Ariz. R. Crim. P. 32.1(g). But Huggins has not demonstrated, below or on review, that *Lafler* and *Cooper* constitute a significant change in the law in Arizona. In both cases, the Supreme Court held a defendant has a right to effective assistance of counsel during the plea bargain process. *Frye*, ___ U.S. at ___, 132 S. Ct. at 1407-08; *Lafler*, ___ U.S. at ___, 132 S. Ct. at 1384. In *Frye*, the court further held the right to effective assistance includes the right to have counsel communicate all formal, favorable plea offers to the defendant. *Frye*, ___ U.S. at ___, 132 S. Ct. at 1408. But that has long been the law in Arizona. *See State v. Donald*, 198 Ariz. 406, ¶¶ 9, 14, 10 P.3d 1193, 1198, 1200 (App. 2000). Even before *Donald* was decided a defendant could have relied on other authority in asserting a claim of ineffective assistance of counsel during plea negotiations. *See, e.g., Hill v. Lockhart*, 474 U.S. 52, 58 (1985); *State v. Bowers*, 192 Ariz. 419, ¶¶ 11, 19-20, 966 P.2d 1023, 1026, 1028 (App. 1998). Thus, Huggins has not identified any change in the law and his claim based on *Lafler* and *Frye* necessarily fails.

¶9 Huggins additionally suggests that Rule 15.8, Ariz. R. Crim. P., is a significant change in the law. To the extent he raised this claim below, it does not entitle him to relief. Rule 15.8 was first promulgated in October 2003, *see* 206 Ariz. LIII, LXXII-LXXIII (2003).

court ruled prematurely. *See* Ariz. R. Crim. P. 32.6(b) (defendant “may file a reply” “[w]ithin fifteen days after receipt of the response”). But any error plainly does not warrant relief. After receiving Huggins’s reply, the court noted it had considered it and determined it did not alter the ruling.

STATE v. HUGGINS
Decision of the Court

It directs the trial court to impose sanctions against the state if material disclosure listed in Rule 15.1(b) is not provided to the defendant thirty days before the plea deadline and other conditions are met.

¶10 Even assuming that Rule 15.8 would apply to the facts presented, Huggins cites no authority suggesting it would apply retroactively to his case. *See* Ariz. R. Crim. P. 32.1(g); *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (failure to develop legal argument waives argument on review). Indeed, the comment to the rule expressly states that it applies “to all criminal cases in which the indictment, information or complaint is filed on or after December 1, 2003.” Ariz. R. Crim. P. 15.8, cmt. to application of 2003 amend. Moreover, in order to raise a claim pursuant to Rule 32.1(g), Huggins must comply with Rule 32.2(b), Ariz. R. Crim. P., by “indicating why the claim was not stated in the previous petition or in a timely manner.”

¶11 Like Huggins’s claims pursuant to Rule 32.1(e), a claim of newly discovered evidence may be raised in an untimely proceeding. Ariz. R. Crim. P. 32.1(e), 32.4(a). But, again, Huggins must comply with Rule 32.2(b) by explaining why he did not raise the claim previously. Although he asserts he did not discover the other plea agreement until his clemency board hearing, that hearing occurred in 1997. Huggins has not explained why he waited until 2013 to raise this claim. Thus, the court did not err in summarily denying relief. *See* Ariz. R. Crim. P. 32.2(b).

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