

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

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THE STATE OF ARIZONA,  
*Respondent,*

*v.*

TUAN LE NGUYEN,  
*Petitioner.*

No. 2 CA-CR 2015-0407-PR  
Filed December 3, 2015

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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NOT FOR PUBLICATION  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. 31.24.*

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Petition for Review from the Superior Court in Maricopa County  
No. CR2003036271002SE  
The Honorable Hugh Hegyi, Judge

**REVIEW GRANTED; RELIEF DENIED**

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COUNSEL

William G. Montgomery, Maricopa County Attorney  
By Catherine Leisch, Deputy County Attorney, Phoenix  
*Counsel for Respondent*

Tuan Le Nguyen, Eloy  
*In Propria Persona*

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MEMORANDUM DECISION

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

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M I L L E R, Presiding Judge:

¶1 Petitioner Tuan Nguyen 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). Nguyen has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Nguyen was convicted of armed robbery, first-degree burglary, and kidnapping. The trial court sentenced him to enhanced, aggravated, concurrent and consecutive terms totaling thirty years' imprisonment. Nguyen thereafter sought and was granted post-conviction relief in part, specifically relating to his sentences. The state petitioned for review, and was granted relief; Nguyen's original sentences were reinstated. Nguyen filed another notice of post-conviction relief in October 2006, and the trial court summarily dismissed it.

¶3 In 2012, Nguyen filed a petition for post-conviction relief, arguing he was entitled to relief based on *Missouri v. Frye*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1399 (2012), which he argued was a significant change in the law. After an evidentiary hearing, the trial court denied relief.

¶4 On review, Nguyen again contends *Frye* and *Lafler v. Cooper*, \_\_\_ U.S. \_\_\_, 132 S. Ct. 1376 (2012), constitute a significant change in the law entitling him to relief and argues the trial court "erred" in concluding his petition was untimely and in its factual findings. Nguyen is correct that, in *Frye* and *Lafler*, the Supreme

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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). Accordingly, any such claim of ineffective assistance of trial counsel is precluded and, as the trial court properly concluded, barred in this untimely proceeding. *See* Ariz. R. Crim. P. 32.1(g), 32.2(a)(3), 32.4(a); *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).

¶5 Therefore, although we grant the petition for review, we deny relief.