

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

SEYMOUR J. ABDULLAH,
Petitioner/Appellant,

v.

THE STATE OF ARIZONA,
Respondent/Appellee.

No. 2 CA-HC 2014-0005
Filed January 27, 2015

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NOT FOR PUBLICATION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. Civ. App. P. 28(c).

Appeal from the Superior Court in Pima County

No. CR20042122

The Honorable Richard S. Fields, Judge

REVIEW GRANTED; RELIEF DENIED

Seymour J. Abdullah, Florence
In Propria Persona

ABDULLAH v. STATE OF ARIZONA
Decision of the Court

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Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Respondent/Appellee

MEMORANDUM DECISION

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

ESPINOSA, Judge:

¶1 Petitioner Seymour Abdullah seeks review of the trial court's order denying his petition for a writ of habeas corpus, which the court treated as a successive petition for post-conviction relief pursuant to Rule 32.3. "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). Abdullah has not sustained his burden of establishing such abuse here.

¶2 After a jury trial, Abdullah was convicted of six counts of forgery, two counts of fraudulent scheme and artifice, five counts of obtaining or procuring the administration of a narcotic drug by fraud, and one count each of attempted fraudulent scheme and artifice, possession of a narcotic drug, and possession of a dangerous drug. This court affirmed his convictions and sentences on appeal. *State v. Abdullah*, No. 2 CA-CR 2005-0212 (memorandum decision filed January 23, 2008). Abdullah sought post-conviction relief, but the trial court dismissed the proceeding and Abdullah apparently did not seek review of that decision. Abdullah also sought and was denied post-conviction relief in 2009.

¶3 In February 2012, Abdullah filed a petition for a writ of habeas corpus, arguing the trial judge had not been "properly seated," challenging the trial court's rulings at sentencing and in his

ABDULLAH v. STATE OF ARIZONA
Decision of the Court

previous Rule 32 proceedings, and raising a claim of ineffective assistance of trial counsel. The trial court properly treated the petition as one for post-conviction relief, *see* Ariz. R. Crim. P. 32.3, and denied relief, concluding Abdullah's claims were precluded.

¶4 On review, Abdullah makes several claims of trial error and perjury, as well as ineffectiveness of counsel. He again challenges many of the trial court's rulings and the results of his previous proceedings for post-conviction relief. And, although not raised in his petition below, he also apparently suggests, insofar as we understand his argument, that he is entitled to relief based on a significant change in the law, specifically the United States Supreme Court's decisions in *Missouri v. Frye*, ___ U.S. ___, 132 S.Ct. 1399 (2012), and *Lafler v. Cooper*, ___ U.S. ___, 132 S.Ct. 1376 (2012).

¶5 Because this last claim was not raised or ruled on by the trial court, we do not address it. *See 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). Even were it not waived, however, we would find the claim precluded. To the extent Abdullah had a claim of ineffective assistance in relation to counsel's performance during plea negotiations, such a claim could have been raised in his previous proceedings, as 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. *See* Ariz. R. Crim. P. 32.1(g), 32.2(a)(2) (claim precluded if finally adjudicated in previous collateral proceeding), 32.2(a)(3) (claim precluded if could have been raised in earlier Rule 32 proceeding but was not). Any court on review may determine a claim is precluded, Rule 32.2(c), and a significant change in law "'requires some transformative event, a clear break from the past,'" *State v. Poblete*, 227 Ariz. 537, ¶ 8, 260 P.3d 1102, 1105 (App. 2011), *quoting State v. Shrum*, 220 Ariz. 115, ¶ 15, 203 P.3d 1175, 1178 (2009).

ABDULLAH v. STATE OF ARIZONA
Decision of the Court

¶6 We likewise agree with the trial court that the remainder of Abdullah's claims are precluded or barred as untimely. In an untimely, successive petition such as this one a defendant may only raise claims pursuant to Rule 32.1(d), (e), (f), (g), or (h). Ariz. R. Crim. P. 32.4(a). And, any claims "adjudicated on the merits on appeal or in any previous collateral proceeding," or that have "been waived at trial, on appeal, or in any previous collateral proceeding" are precluded. Ariz. R. Crim. P. 32.2(a)(2),(3). Abdullah has identified no claim that is exempt from the rules of preclusion or timeliness, and we therefore cannot say the court abused its discretion in dismissing his petition.

¶7 Therefore, although we grant the petition for review, relief is denied.