NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Respondent*,

v.

QURIAN VERE ROBERSON, *Petitioner*.

No. 1 CA-CR 13-0408 PRPC
FILED 1-27-2015

Petition for Review from the Superior Court in Maricopa County
No. CR2002-095105
The Honorable Roger E. Brodman, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Diane Meloche
Counsel for Respondent

Qurian Vere Roberson, Buckeye
Petitioner

MEMORANDUM DECISION

Judge Maurice Portley delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Jon W. Thompson joined.

P O R T L E Y, Judge

¶1 Petitioner Qurian Vere Roberson petitions this court to review the dismissal of his notice of post-conviction relief. We have considered his petition for review and, for the reasons stated, grant review and deny relief.

¶2 A jury convicted Roberson of two counts of armed robbery, three counts of aggravated assault, and misconduct involving weapons, and we affirmed his convictions and original sentences on direct appeal. *State v. Roberson*, 1 CA-CR 03-0560 (Ariz. App. Feb. 3, 2005) (mem. decision). After a successful petition for post-conviction relief, the trial court resentenced Roberson to an aggregate term of 31.5 years' imprisonment and we again affirmed his sentences. *State v. Roberson*, 1 CA-CR 10-0655, 2011 WL 2555729 (Ariz. App. Jun 28, 2011) (mem. decision).

¶3 After the mandate issued in February 2012, Roberson filed his petition for post-conviction relief in June 2013, his third after he had been resentenced and seventh overall. He argued that his lawyer was ineffective during an October 2002 settlement conference before Judge James H. Keppel. The trial court summarily denied his petition. Roberson now seeks review of the summary dismissal. We have jurisdiction pursuant to Arizona Rule of Criminal Procedure 32.9(c).

¶4 In his petition, Roberson argues his trial counsel was ineffective when he failed to adequately advise him during the plea bargain process. Roberson claims he is entitled to raise the claim in a successive petition for post-conviction relief based on the Supreme Court decisions of *Missouri v. Frye*, 132 S. Ct. 1399 (2012), and *Lafler v. Cooper*, 132 S. Ct. 1376 (2012), both of which he argues constitute significant changes in the law. In both cases, the United States Supreme Court held a defendant has a right to effective assistance of counsel during the plea bargain process. *Frye*, 132 S. Ct. at 1407-08; *Lafler*, 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*, 132 S. Ct. at 1408.

¶5 *Frye* and *Lafler*, however, are not significant changes in the law as applied in Arizona. Arizona has long recognized that the right to effective assistance of counsel extends to the plea bargain process, and that counsel must adequately communicate all plea offers to the defendant. *State v. Donald*, 198 Ariz. 406, 413, ¶¶ 14-17, 10 P.3d 1193, 1200 (App. 2000), *rev. denied* (March 20, 2001), *cert. denied, Arizona v. Donald*, 534 U.S. 825 (2001).

¶6 Roberson did not timely raise his ineffective of counsel claim in his earlier petitions. He did not timely raise the issue within thirty days of the February 2012 mandate. Ariz. R. Crim. P. 32.4(a). As a result, his petition raising the ineffective assistance of counsel claim during the plea negotiations is waived because it was not filed in his earlier petitions, Arizona Rule of Criminal Procedure 32.2(a), and untimely under Rule 32.4(a). Accordingly, the trial court did not err in summarily dismissing Roberson's June 2013 petition, and we deny relief.

¶7 We grant review and deny relief.



Ruth A. Willingham · Clerk of the Court
FILED : ama