



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**STATE OF ARIZONA V. RONALD BRUCE BIGGER  
CR-20-0383-PR**

**PARTIES:**

*Petitioner/Defendant:* Ronald Bruce Bigger

*Respondent:* The State of Arizona

*Amicus Curiae:* (1) Arizona Attorney General; and (2) Arizona Attorneys for Criminal Justice (in support of Petitioner)

**FACTS:**

After a jury trial, Bigger was convicted of first-degree murder and conspiracy to commit first-degree murder. His convictions and sentences were affirmed by the court of appeals.

Bigger subsequently filed a petition for post-conviction relief in which he argued that he had received ineffective assistance of trial counsel and that *Perry v. New Hampshire*, 565 U.S. 228 (2012), a United States Supreme Court case regarding the constitutionality of eyewitness identifications, was a significant change in the law. The trial court summarily denied relief.

The court of appeals analyzed the ineffective assistance of counsel claims, whether *Perry* was a significant change in law, and the timeliness of the petition for post-conviction relief.

1. Ineffective Assistance of Counsel (“IAC”)

The court of appeals concluded that Bigger’s claims focused on strategic choices by trial counsel and that trial tactics and strategies could not serve as the basis for an IAC claim. It determined that Bigger did not demonstrate that his counsel was inept, inexperienced or lacked preparation. It noted that Bigger had not offered an affidavit from an expert witness to support his claims or otherwise shown that counsel’s decisions, even if ultimately unsuccessful, were the result of a lack of experience or preparation.

The court of appeals addressed Bigger’s argument that there was no requirement that a Rule 32 petitioner must include a standard-of-care declaration. It cited to the requirement that a defendant must show that counsel’s performance fell below objectively reasonable standards in order to establish a colorable IAC claim. It noted that under the Rules, there is a requirement for a defendant to attach to the petition any affidavits, records, or other evidence currently available to the defendant to support the allegations in the petition. It acknowledged that an affidavit may not always be required to establish that counsel’s performance did not meet prevailing professional standards, but it

determined that a defendant must do more than disagree with, or posit alternatives to, counsel's decisions to overcome the presumption of proper action. Here, it concluded that the trial court did not abuse its discretion in denying relief on the IAC claims without an evidentiary hearing.

2. Significant Change in the Law

The court of appeals determined that *Perry* was not a significant change in the law, but a subsequent case, *State v. Nottingham*, 231 Ariz. 21 (2012), which brought Arizona jury instruction practice into conformity with *Perry*, was. It concluded that Bigger's case had become final before *Nottingham* was decided and that it did not apply retroactively, so relief was denied.

3. Timeliness of the Petition

The court of appeals analyzed the applicability of Rule 32 in relation to A.R.S. §§ 13-4232 and 13-4234. It acknowledged that the statutes arguably conflict with Rule 32.4 because the statutes do not provide a provision excusing the untimely filing of a notice of petition for post-conviction relief when the defendant is not at fault. The court of appeals concluded that if a claim is either exempt or excluded from the time limits for notices provided by Rules 32 and 33, a claim will not be time barred. But if a claim is time barred under the Rules, a court will lack the authority to consider it. Here, the court of appeals reasoned that Bigger's IAC claims, which fell under Rule 32.1(a), were not time barred because the untimeliness of the notice was not his fault. It further reasoned that his Rule 32.1(g) claims were exempt from the time limits.

**ISSUES:**

“1. What standard must a defendant meet to make a colorable claim of ineffective assistance of counsel?”

“2. Did *Perry v. New Hampshire* constitute a significant change in Arizona law?”

“3. Did the COA erroneously state the law as to “jurisdictional” time limits for filing PCR notices?”

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