NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK
SEP 14 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2012-0324-PR
	)	DEPARTMENT A
Respondent,	)	
	)	MEMORANDUM DECISION
v.	)	Not for Publication
	)	Rule 111, Rules of
DEMETRIO ACOSTA URTUSUASTEGUI,	)	the Supreme Court
	)	
Petitioner.	)	
	)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2007145282001DT

Honorable Warren J. Granville, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Diane Meloche — Phoenix
Attorneys for Respondent

Demetrio A. Urtusuastegui — Tucson
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 Petitioner Demetrio Urtusuastegui 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). Urtusuastegui has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Urtusuastegui pled no contest to second-degree murder, and the trial court imposed an enhanced, aggravated twenty-two year term of imprisonment. Thereafter, Urtusuastegui initiated a post-conviction relief proceeding, and counsel filed a notice stating she was "unable to find a colorable issue to submit to the court." In his pro se petition, however, Urtusuastegui asserted, without citation to legal authority or evidence in support, that he wanted to withdraw his no-contest plea because he "was misle[]d to believe that the evidence against him was irrefutable and he would rather proceed to trial and make the state prove every element of its case." After the state filed a response urging the court to summarily dismiss the proceeding on the basis of Urtusuastegui's failure to comply with Rule 32.5, Urtusuastegui filed a reply in which he more extensively argued he had been coerced by counsel to enter the plea, his interpreter had spoken "different dialects" of Spanish than he did, and he had been "medicated during the proceedings." The court dismissed the petition, concluding Urtusuastegui had presented only "generalizations and unsubstantiated claims," and noting that Urtusuastegui's reply "contain[ed] not much more specificity and no affidavits, evidence or proffers."

¶3 On review, Urtusuastegui acknowledges Rule 32.5 requires a defendant to set forth "[f]acts within [his] personal knowledge . . . separately from other allegations of fact . . . under oath," and to support his petition otherwise with "[a]ffidavits, records, or other evidence currently available," but he argues he "is a Mexican national and is not

required to know law."[1] And he argues the trial court abused its discretion in dismissing his petition, essentially repeating or expanding the arguments made below.[2]

¶4 As below, however, Urtusuastegui fails to set forth in any detail how counsel coerced him to accept a plea agreement or how the interpreter's purported difference in dialect affected his understanding of the proceedings. And the transcript of his change of plea hearing shows that the trial court asked Urtusuastegui about any medication he was taking and whether he could understand what was happening. Urtusuastegui indicated he had taken the correct amount of his medication and could understand the proceedings. Thus, even if we were to accept Urtusuastegui's claim that the court should have accepted some part of his reply as an attempt to "provide a satisfactory explanation of the[] absence" of a sworn statement, *State v. Donald*, 198 Ariz. 406, ¶ 17, 10 P.3d 1193, 1200 (App. 2000), he has not even set forth unsworn statements sufficient to establish he is entitled to an evidentiary hearing or relief. Rather, as the court essentially concluded, Urtusuastegui has done nothing more than engage in unsupported speculation and attempt to contradict the record before us. *See id.* ¶ 21 (to warrant evidentiary hearing, Rule 32 claim "must consist of more than conclusory

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[1]Contrary to this assertion, Urtusuastegui is held to the same rules as an attorney, even though he is acting on his own behalf. *See State v. Cornell*, 179 Ariz. 314, 331, 878 P.2d 1352, 1369 (1994).

[2]Urtusuastegui also appears to raise several new claims on review, including, inter alia, claims of newly discovered evidence, ineffective assistance of counsel in relation to sentencing, and ineffective assistance of counsel in investigating the case. Because they were not raised below, we do not address these claims on review. *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").

assertions"); *see also State v. McDaniel*, 136 Ariz. 188, 198, 665 P.2d 70, 80 (1983) (claimant bears burden of establishing ineffective assistance of counsel and "[p]roof of ineffectiveness must be a demonstrable reality rather than a matter of speculation"); *State v. Jenkins*, 193 Ariz. 115, ¶ 15, 970 P.2d 947, 952 (App. 1998) (defendant must do more than contradict what record clearly shows). We therefore cannot say the court abused its discretion in dismissing his petition. Thus, although we grant the petition for review, we deny relief.

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge

/s/ J. William Brammer, Jr.
J. WILLIAM BRAMMER, JR., Judge