

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JUAN CARLOS PINEDA-NAVARRO, *Petitioner*.

No. 1 CA-CR 16-0112 PRPC
FILED 10-31-2017

Petition for Review from the Superior Court in Maricopa County
No. CR2012-132905-003
The Honorable Daniel J. Kiley, Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Maricopa County Attorney's Office, Phoenix
By Gerald R. Grant
Counsel for Respondent

Juan Carlos Pineda-Navarro, Florence
Petitioner

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in
which Judge Jon W. Thompson and Chief Judge Samuel A. Thumma joined.

STATE v. PINEDA-NAVARRO
Decision of the Court

JONES, Judge:

¶1 Juan Pineda-Navarro petitions this Court for review from the dismissal of his petition for post-conviction relief (PCR). We have considered the petition for review and, for the reasons stated, grant review and deny relief.

¶2 Pineda-Navarro pleaded guilty to burglary in the first degree and kidnapping, a dangerous crime against children.¹ He was sentenced to twenty-two years' imprisonment on the kidnapping count, consecutive to the sentences in CR2010-119369-001 and CR2012-113855-001, and to five years of intensive probation supervision upon release from prison. Pineda-Navarro timely filed a PCR, claiming: "actual innocence"; his plea was not knowing, intelligent, and voluntary as a result of "inadequate" performance by his interpreter; his plea counsel was ineffective for failure to appropriately investigate his case and interview a key exculpatory witness; and his counsel was ineffective for failing to correctly advise him of the range of sentences he was facing under the plea. The superior court summarily dismissed his PCR.

¶3 Pineda-Navarro filed his petition for review reiterating his claims. The only support for any of his claims is his own self-serving, conclusory affidavit attached to his PCR, which is generally insufficient to raise a colorable claim. *Wilson*, 179 Ariz. at 20. He does not attach any third-party affidavits, documentation, record cites, or state any specifics as to how he was prejudiced by a lack of investigation, or the failure to interview his exculpatory witness. *See* Ariz. R. Crim. P. 32.5 ("Affidavits, records, or other evidence available to the defendant supporting the allegations of the petition shall be attached to it."). As noted by the superior court, Pineda-Navarro does not include an affidavit from his allegedly exculpatory witness, as necessary to support his claim. *See State v. Borbon*, 146 Ariz. 392, 399-400 (1985) (failure to include affidavit of witness' potential testimony does not support an ineffective assistance of counsel claim).

¶4 Pineda-Navarro does not meet his burden upon the claim that his plea was defective based upon court interpreter deficiencies. We

¹ We note that a settlement conference is referenced in the plea proceeding and one took place, but Pineda-Navarro failed to provide a transcript for the record. We presume this would support the superior court's decision. *State v. Wilson*, 179 Ariz. 17, 19 (App. 1993) (courts presume material missing from the record supports the decision of the trial court).

STATE v. PINEDA-NAVARRO
Decision of the Court

presume that court interpreters will correctly carry out their duties and that oaths will be properly administered. *State v. Mendoza*, 181 Ariz. 472, 475 (App. 1995) (citing *State v. Navarro*, 132 Ariz. 340, 342 (App. 1982)). The burden rests with the defendant to show he was denied a fair trial or hearing as a result of the interpreter's alleged deficiencies. *Id.*; see also *In re MH 2007-001895*, 221 Ariz. 346, 349, ¶ 12 (App. 2009). Aside from a vague assertion that the interpreter only engaged in a general translation, Pineda-Navarro provides no specific facts that might be deemed sufficient to illustrate deficient performance affecting the proceedings.

¶5 Pineda-Navarro's claim of "actual innocence" under Rule 32.1(h) likewise fails. The record shows Pineda-Navarro was apprehended at the scene of the crime, which belies his claim to have been elsewhere, and, in the context of this plea, his claims that he had no property at his home are irrelevant. Pineda-Navarro then admits in his pleadings that he was present, purportedly as an "innocent dupe," which stands in direct contradiction to his own "alibi" assertion. "It is important to note . . . that 'actual innocence' means factual innocence, not mere legal insufficiency." *Bousley v. United States*, 523 U.S. 614, 623 (1998). The record created at the time of his plea and sentencing proceedings, including as noted by the superior court, also belies his claim.

¶6 To show ineffective assistance of counsel, Pineda-Navarro must show both deficient performance by counsel and prejudice. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). The trial court is not bound by the self-serving assertions of Pineda-Navarro, especially when clearly contradicted by evidence contained within the record, and in this instance, those assertions are not enough to require an evidentiary hearing. See e.g., *State v. Goswick*, 142 Ariz. 582, 585 (1984) (in the context of an ineffective assistance of counsel claim, finding no sufficient factual basis to support an allegation based upon a self-serving affidavit of the defendant); see also *Toro v. Fairman*, 940 F.2d 1065, 1068 (7th Cir. 1991) (holding a defendant's self-serving affidavit regarding plea not sufficient alone to show prejudice).

¶7 The superior court addressed in great detail, and rejected, Pineda-Navarro's claims of ineffective assistance of counsel, and the trial court having taken an involuntary plea. The superior court quoted significant portions of the plea colloquy, including identification of the range of sentence. The superior court also addressed his claim that plea counsel not only mislead or misadvised him, but actively encouraged him to provide an apparent false factual basis. Our additional comments notwithstanding, no purpose would be served by this Court rehashing the

STATE v. PINEDA-NAVARRO
Decision of the Court

superior court's recitation of facts and correct ruling in its written decision.
State v. Whipple, 177 Ariz. 272, 274 (App. 1993).

¶8 Accordingly, we grant review, adopt the trial court's ruling, and deny relief.