IN THE

ARIZONA COURT OF APPEALS

DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

STEVEN JOEL SPURLOCK,
Petitioner.

No. 2 CA-CR 2019-0110-PR
Filed August 13, 2019

Petition for Review from the Superior Court in Cochise County
No. CR201600122
The Honorable John F. Kelliher Jr., Judge

REVIEW GRANTED; RELIEF DENIED

COUNSEL

Brian M. McIntyre, Cochise County Attorney
By Sara V. Ransom, Deputy County Attorney, Bisbee
Counsel for Respondent

Steven J. Spurlock, Florence
In Propria Persona

MEMORANDUM DECISION

Chief Judge Vásquez authored the decision of the Court, in which Presiding Judge Staring and Judge Eppich concurred.

V Á S Q U E Z, Chief Judge:

¶1 Petitioner Steven Spurlock 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 (App. 2007). Spurlock has not sustained his burden of establishing such abuse here.

¶2 Pursuant to a plea agreement, Spurlock was convicted of kidnapping, attempted luring of a minor for sexual exploitation, and tampering with evidence. The trial court sentenced him to a seventeen-year prison term on the kidnapping conviction and suspended the imposition of sentence on the remaining convictions, placing Spurlock on concurrent terms of probation, the longer of which is a lifetime term.

¶3 Spurlock thereafter sought post-conviction relief, arguing he had received ineffective assistance of counsel based on counsel's alleged failure to sufficiently investigate before Spurlock accepted the plea or to properly advise him in regard to the plea offer. The trial court summarily denied relief.

¶4 On review, Spurlock again argues trial counsel was ineffective, asserting that had counsel investigated his claim "that the victim was not 'locked' in [Spurlock's] home" a more favorable plea might have been offered and that had counsel "fully advised" him of the "consequences of his decision to plead guilty," he would have chosen to proceed to trial. To prevail on his claims of ineffective assistance, Spurlock was required to demonstrate both that counsel's performance was deficient and that he was thereby prejudiced. *See Strickland v. Washington*, 466 U.S. 668, 687-88 (1984); *State v. Nash*, 143 Ariz. 392, 397 (1985). "When a claim of ineffective assistance of counsel stems from plea proceedings, a defendant must show a reasonable probability that, 'but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial.'" *State v. Nunez-Diaz*, ___ Ariz. ___, ¶ 13, 444 P.3d 250 (2019) (quoting *Hill v.*

Lockhart, 474 U.S. 52, 59 (1985)). "To do so, it must 'have been rational under the circumstances' for a defendant to refuse a plea and go to trial." *Id.* (quoting *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010)).

¶5 Spurlock has not, however, established that counsel's advice was erroneous. He has not supported his claims with affidavits or other evidence in the trial court suggesting counsel's advice or investigation fell below prevailing professional norms. *See* Ariz. R. Crim. P. 32.5(d) (defendant must "attach to the petition any affidavits, records, or other evidence currently available to the defendant supporting the petition's allegations"). He cites no authority in his petition for review, nor did he below, showing similar conduct by counsel has been found to constitute ineffectiveness. Indeed, he cites no authority at all in his petition for review.

¶6 Likewise, he has not established that his conviction for kidnapping required evidence that he had "locked" the victim in his home. Kidnapping requires only that a defendant "knowingly restrain[] another person" with the requisite intent. A.R.S. § 13-1304(A). "Restraint is without consent if it is accomplished by . . . [a]ny means including acquiescence of the victim if the victim is a child less than eighteen years old . . . and the victim's lawful custodian has not acquiesced in the movement or confinement." A.R.S. § 13-1301(2)(b). In sum, his bald assertions that counsel erred are insufficient to sustain his burden of demonstrating the first requirement of the *Strickland* test. *See Donald*, 198 Ariz. 406, ¶ 21 (to warrant evidentiary hearing, Rule 32 claim "must consist of more than conclusory assertions"). Thus, we cannot say the trial court abused its discretion in dismissing Spurlock's petition.

¶7 We grant the petition for review, but we deny relief.