

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Respondent,

v.

RANDY JOE SPICER,
Petitioner.

No. 2 CA-CR 2016-0202-PR
Filed June 7, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Petition for Review from the Superior Court in Yavapai County
Nos. P1300CR201200757 and P1300CR201200760
The Honorable Tina R. Ainley, Judge

REVIEW GRANTED; RELIEF DENIED

Randy J. Spicer, Kingman
In Propria Persona

STATE v. SPICER
Decision of the Court

MEMORANDUM DECISION

Judge Miller authored the decision of the Court, in which Presiding Judge Vásquez and Chief Judge Eckerstrom concurred.

M I L L E R, Judge:

¶1 Randy Spicer seeks review of the trial court’s order summarily denying his of-right petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P. We will not disturb that order unless the court clearly abused its discretion. *See State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). Spicer has not met his burden of demonstrating such abuse here.

¶2 Pursuant to a plea agreement encompassing two cause numbers, Spicer pled guilty to four counts of luring a minor for sexual exploitation and one count each of sexual conduct with a minor, possession of marijuana, and conspiracy to commit transportation of a dangerous drug for sale. The trial court sentenced him to consecutive prison terms totaling 13.5 years for one count of luring a minor for sexual exploitation, sexual conduct with a minor, and conspiracy to commit transportation of a dangerous drug for sale. For each of the remaining luring offenses, the court suspended the imposition of sentence and placed Spicer on lifetime probation. For his conviction of possession of marijuana, the court suspended the imposition of sentence and placed Spicer on a three-year term of probation.

¶3 Spicer sought post-conviction relief, and appointed counsel filed a notice stating she had reviewed the record but found no claims to raise pursuant to Rule 32. Spicer then filed a pro se petition asserting: (1) that a “constructive amendment to the indictment caused loss of subject matter jurisdiction,” rendering void one of his convictions for luring a minor for sexual misconduct; (2) the trial court improperly considered his previous felony conviction as an aggravating factor; (3) concurrent prison terms

STATE v. SPICER
Decision of the Court

were more appropriate; (4) the court lacked authority to revoke his medical license; (5) the court lacked jurisdiction to “render judgment” on the conspiracy charge because there was no “valid indictment, information or another jurisdictional instrument” bearing the appropriate case number; and (6) trial counsel had been ineffective for failing to raise these issues. He additionally suggested in his reply to the state’s response that he was innocent of conspiracy and that his counsel had given him inadequate or incorrect information concerning the state’s plea offer. The court allowed Spicer to supplement his petition to additionally claim that his luring convictions violated double jeopardy because those counts “cultivated into sexual misconduct,” and that the state withheld evidence in order to induce his plea to conspiracy. The court summarily denied Spicer’s claims, and this petition for review followed the court’s denial of Spicer’s motion for rehearing.

¶4 The precise issues Spicer raises on review are difficult to discern. In a section of his petition labeled “Issues for Review,” he asserts without explanation or citation to the record that the trial court erred in rejecting several of his claims. The failure to adequately develop a claim constitutes waiver. *See State v. Stefanovich*, 232 Ariz. 154, ¶ 16, 302 P.3d 679, 683 (App. 2013). And Rule 32.9(c)(1) requires a petition to include “reasons why the petition should be granted” and either an appendix or “specific references to the record.” Thus, we do not address these arguments further. In Spicer’s recitation of the facts, he alludes to some of his claims but, again, does not explain how the court erred in rejecting them.¹ Therefore, he also has waived these arguments, and we do not address them.

¶5 In his “Law & Arguments” section, Spicer asserts that he is actually innocent of luring a minor for sexual exploitation and

¹The trial court did not expressly address Spicer’s argument, raised for the first time in his reply, that he was innocent of conspiracy. But it was not required to consider that argument, *see State v. Lopez*, 223 Ariz. 238, ¶¶ 6-7, 221 P.3d 1052, 1054 (App. 2009), and we therefore decline to address it on review.

STATE v. SPICER
Decision of the Court

that his convictions violate double jeopardy because luring “is a lesser included offense of the sexual misconduct charge.” Spicer did not raise the first claim below, and we consequently do not address it on review. *See State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (appellate court need not address claims not raised below).

¶6 As to his second claim, he identifies no error in the trial court’s conclusion that he waived this issue by pleading guilty. *See State v. Flores*, 218 Ariz. 407, ¶ 6, 188 P.3d 706, 708 (App. 2008) (guilty plea “waives all non-jurisdictional defects”). We note, however, that a double jeopardy claim is not necessarily waived by a guilty plea. *See State v. Millanes*, 180 Ariz. 418, 420-21, 885 P.2d 106, 108-09 (App. 1994). But even assuming, without deciding, that Spicer has not waived this claim, he is not entitled to relief. Luring a minor for sexual exploitation is not a lesser included offense of sexual conduct with a minor. *Cf. State v. Fristoe*, 135 Ariz. 25, 31, 658 P.2d 824, 831 (App. 1982) (“solicitation is not a lesser included offense of attempt[ed sexual conduct]”; offense is lesser included only if “greater offense cannot be committed without necessarily committing the second lesser offense”).

¶7 We grant review but deny relief.