

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

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 09/25/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

STATE OF ARIZONA,) 1 CA-CR 11-0217
) 1 CA-CR 11-0218
Appellee,) (Consolidated)
)
v.) DEPARTMENT A
)
) **MEMORANDUM DECISION**
GREG RICHARD FOWLER,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-167597-001 SE

Cause No. CR2010-134929-001 SE

The Honorable Roger E. Brodman, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

Greg Richard Fowler San Luis
Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Greg Richard Fowler has searched the record and has been unable to discover any arguable questions of law. As a result, she filed a brief requesting that we conduct an *Anders* review of the record. And, Defendant has filed a supplemental brief.

FACTS¹

¶2 Cami G. and her boyfriend, Robert M., had a home alarm system installed after they noticed missing personal items. The next day, Robert came home, deactivated the alarm, and immediately noticed Defendant standing in the kitchen.² There was a brief fight, but Defendant ran away and dropped several pieces of jewelry in the street trying to get away. Robert subsequently identified Defendant in a photographic line-up, and Cami confirmed that it was her jewelry found strewn in the street.

¹ We review the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).

² Defendant apparently entered through a doggie door.

¶3 Defendant was charged with and convicted of burglary in the second degree.³ He was sentenced to ten years in prison and received credit for forty-six days of presentence incarceration.⁴ Defendant timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031 and -4033(A)(1) (West 2012).

DISCUSSION

¶4 Defendant raises two issues in his supplemental brief: juror misconduct and interference with his meaningful access to the courts.⁵ We address each issue in turn.

Juror Misconduct

¶5 Defendant argues that the court erred when it did not hold an evidentiary hearing after learning that some jurors had discussed the case before deliberations. We review the court's decision for an abuse of discretion. *State v. Miller*, 178 Ariz. 555, 556, 875 P.2d 788, 789 (1994). A court's duty to

³ Defendant was also charged with but found not guilty of assault.

⁴ The court also revoked Defendant's unsupervised probation for a prior misdemeanor and sentenced him to time served in jail.

⁵ Defendant also claims that his trial and appellate lawyers were ineffective. He has to bring these claims in a "Rule 32 [post-conviction relief] proceeding[]." *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002); *State v. Clark*, 196 Ariz. 530, 538, ¶ 35, 2 P.3d 89, 97 (App. 1999) (noting that claims of ineffective assistance of appellate counsel fall within post-conviction relief proceedings) (citation omitted). Accordingly, we will not address the issue.

investigate potential juror misconduct is not triggered unless the alleged misconduct "relate[s] to a material fact or law at issue in the case." *State v. Davolt*, 207 Ariz. 191, 208, ¶ 56, 84 P.3d 456, 473 (2004) (citation omitted). Furthermore, even if misconduct does occur, a new trial is warranted only if the defendant demonstrates "actual prejudice or if prejudice may be fairly presumed from the facts." *Miller*, 178 Ariz. at 558, 875 P.2d at 791 (emphasis omitted) (citation omitted).

¶6 Here, the court received information that some jurors had violated the admonition by talking about the case. The court, with the approval of both lawyers, then questioned each juror to determine whether further inquiry was necessary. The responses confirmed that no discussions had "affected [any juror's] ability to fairly and impartially listen to the evidence," "caused [any juror] to draw any conclusions about the case," or "affected [any juror's] ability to keep an open mind and to listen to all of the evidence." The court also reminded each juror "that jury members are not to discuss the case with other jurors until all [of] the evidence is completed," the jury instructions are read, and closing arguments are delivered.

¶7 The record supports the decision that an evidentiary hearing was unnecessary. Because "[t]he trial court [wa]s in the best position to determine what effect, if any, alleged misconduct might have had upon . . . jurors," we defer to the

court's determination that the approach it adopted adequately cured any risk of prejudice. *Brooks v. Zahn*, 170 Ariz. 545, 549, 826 P.2d 1171, 1175 (App. 1991) (citation omitted). Consequently, we find no error.

Meaningful Access to the Courts

¶8 Defendant also contends that the Arizona Department of Corrections has hindered his ability to conduct legal research and prepare his appeal, thus depriving him of meaningful access to the courts. We disagree.

¶9 A prisoner's constitutionally protected right of access to the courts "includes a right to have the transcripts of his trial made available to him . . . [and] the right to access a law library or have legal assistance provided." *Clark*, 196 Ariz. at 540, ¶ 47, 2 P.3d at 99 (citations omitted). The right to legal materials and assistance, however, is guaranteed "only as a means for ensuring a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Id.* (citation and internal quotation marks omitted). Thus, to prevail, Defendant must show that his right of access was violated and that the violation precluded him from presenting his appeal. *Id.* (citation omitted).

¶10 Despite his claim that "[h]e has been denied access to the law" while incarcerated and therefore is "unable to express himself in the manner required," Defendant submitted a

supplemental brief challenging his convictions and sentences, complete with exhibits consisting of court documents and excerpts of trial transcripts. Moreover, the supplemental brief is replete with citations to legal authorities in support of his arguments on appeal. Consequently, even assuming he did not have unfettered access to the prison library, we cannot conclude that Defendant's ability to present meritorious legal arguments to the court has been hindered. *Id.*

Anders Review

¶11 Having addressed the issues in the supplemental brief, we have also considered the opening brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. The record, as presented, reveals that Defendant was represented by counsel at all stages of the proceedings, that the sentences imposed were within the statutory limits, and that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure.

¶12 After this decision is filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel must only inform Defendant of the status of the appeal and Defendant's future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant may, if desired, file a motion for

reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

CONCLUSION

¶13 Accordingly, we affirm Defendant's convictions and sentences.

/s/

MAURICE PORTLEY, Presiding Judge

CONCURRING:

/s/

ANN A. SCOTT TIMMER, Judge

/s/

ANDREW W. GOULD, Judge