

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



DIVISION ONE
FILED: 07/17/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0257
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ANTHONY JAMES GONSALVES,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2010-135326-001DT

The Honorable Lisa Daniel Flores, Judge

AFFIRMED

Thomas C. Horne, Arizona 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 Cory Engle, Deputy Public Defender
Attorney for Appellant

D O W N I E, Judge

¶1 Anthony James Gonsalves timely appeals his conviction for burglary in the second degree in violation of Arizona Revised Statutes ("A.R.S.") section 13-1507. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Despite being afforded the opportunity to do so, Gonsalves did not file a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶2 J.W. noticed a truck with its tailgate down parked in the driveway of his home. As he approached, he saw Gonsalves exit the front door. J.W. asked what he was doing, but Gonsalves ran to the truck and drove off. J.W. wrote down the license plate number and called the police.

¶3 J.W. discovered his dishwasher "about three feet from the front door." The dishwasher hose had been cut, and there was a water trail from the kitchen to the front door. He also found the cook top had been removed and a basement window shattered. Detective Holyk matched the license plate number

J.W. provided to a truck owned by Superior Home Maintenance. The company's owner, C.S., told the detective that the truck was assigned to Gonsalves on the day in question and that Gonsalves did not work any jobs that day. Detective Holyk prepared a photo lineup; J.W. identified Gonsalves as the man at his home. When the detective questioned Gonsalves, he admitted driving the work truck on the day in question.

¶14 Gonsalves was indicted for burglary in the second degree, a class 3 felony. J.W., Detective Holyk, and C.S., among others, testified for the prosecution. At the conclusion of the State's case-in-chief, Gonsalves moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). The motion was denied. Gonsalves testified in his own defense. The jury found him guilty as charged.

¶15 At sentencing, the trial court found that Gonsalves had 12 prior felony convictions and was on parole at the time of this offense. He was sentenced to 11.25 years' imprisonment, with 88 days of presentence incarceration credit. Gonsalves timely appealed.

DISCUSSION

¶16 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the

Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Gonsalves was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the charged offense. The record reflects no irregularity in the deliberation process.

¶17 The trial court properly denied Gonsalves's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citations omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶18 The State presented substantial evidence that Gonsalves "enter[ed] or remain[ed] unlawfully in or on a residential structure with the intent to commit any theft or any felony therein." Ariz. Rev. Stat. § 13-507; see also *id.* § -1802(A)(5) ("A person commits theft if, without lawful authority, the person knowingly . . . [c]ontrols property of

another knowing or having reason to know that the property was stolen"). J.W. testified that a few hours before the incident, his house was locked and in perfect condition. J.W. testified that Gonsalves left the house, saw him, ran to his truck, and drove away without explanation. J.W. found the dishwasher had been removed and was near the front door. The cook top had also been removed, and a basement window had been shattered. Gonsalves admitted he was at J.W.'s home on the date in question and did not have permission to be at or inside the house.

¶9 Based on the State's evidence, reasonable jurors could conclude that Gonsalves unlawfully entered J.W.'s home with the intent to commit a theft.

CONCLUSION

¶10 We affirm Gonsalves's conviction and sentence. Defense counsel's obligations in this appeal have ended. Counsel need do nothing more than inform Gonsalves of the status of the appeal and his future options, unless counsel's review reveals 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). On the court's own motion, Gonsalves shall have 30 days from the date of this

decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MICHAEL J. BROWN, Presiding Judge

/s/
RANDALL M. HOWE, Judge