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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: 12/18/2012
RUTH A. WILLINGHAM,
CLERK
BY: mjt

STATE OF ARIZONA,) 1 CA-CR 11-0493
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
BULMARO SOTO-PORTILLO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-127952-002

The Honorable Roger E. Brodman, Judge

AFFIRMED

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

Maricopa County Public Defender Phoenix
By Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

Bulmaro Soto-Portillo Tucson
Appellant In Propria Persona

H O W E, Judge

¶1 Bulmaro Soto-Portillo appeals his convictions and sentences for armed robbery, aggravated assault, burglary in the first degree, theft of means of transportation, and kidnapping. Soto-Portillo's counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Counsel therefore requests that we review the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this Court reviews the entire record for reversible error). Soto-Portillo has filed a supplemental opening brief and an amended supplemental opening brief in propria persona, which we address.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031 and -4033(A) (Westlaw 2012).¹ Finding no reversible error, we affirm.

¹ We cite the current version of the applicable statutes because no revisions material to this decision have since occurred.

FACTS AND PROCEDURAL HISTORY²

¶3 On June 7, 2010, a grand jury indicted Soto-Portillo and two codefendants with six counts of kidnapping (Counts 1-6), each a class two dangerous felony, in violation of A.R.S. § 13-1304; one count of armed robbery (Count 7), a class two dangerous felony, in violation of A.R.S. § 13-1904; one count of aggravated assault (Count 8), a class three dangerous felony, in violation of A.R.S. §§ 13-1203 and -1204; and one count of burglary in the first degree (Count 9), a class two dangerous felony, in violation of A.R.S. § 13-1508. The grand jury also alleged three of the kidnapping counts (Counts 4-6) as dangerous crimes against children. The grand jury further indicted Soto-Portillo individually with theft of means of transportation (Count 10), a class three felony, in violation of A.R.S. § 13-1814.

¶4 At trial, the State presented the following evidence: At approximately 1:30 a.m. on May 30, 2010, L.B. awoke to the sound of glass breaking and saw men armed with guns enter her residence. The men herded L.B.'s mother, father, and three children into a closet and physically and verbally threatened them while demanding and taking their money and valuables.

² We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Soto-Portillo. See *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

Soto-Portillo demanded that L.B. give him the keys to L.B.'s father's truck, and L.B. complied. Sometime during the invasion, a neighbor and her friend called the police. When police officers arrived, the intruders fled the house.

¶15 Police officers tracked Soto-Portillo to an apartment complex, obtained a search warrant for an apartment, and executed the warrant. They found Soto-Portillo and another person hiding in the attic. During the search, police officers found various items taken from L.B.'s home, including jewelry bearing the names of L.B. and of her family.

¶16 After the police advised Soto-Portillo of his *Miranda*³ rights, he admitted to taking part in the home invasion. L.B. identified Soto-Portillo in a photographic line-up.

¶17 Before the jury rendered its verdict, Soto-Portillo stipulated to the presence of aggravating circumstances, including committing the offense for pecuniary gain, causing emotional and financial harm to the victims, and having prior felony convictions. The jury found him guilty as charged on all counts and found that Counts 1-9 were dangerous offenses. The jury did not find that Counts 4-6 were dangerous crimes against children.

¶18 The trial court sentenced Soto-Portillo to aggravated terms of twelve years' imprisonment for Counts 1-7 and Count 9,

³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

ten years' imprisonment for Count 8, and three and a half years' imprisonment for Count 10. The trial court also ordered that Counts 1, 7, 8, and 9 run concurrently with each other. The court further ordered that Counts 2 through 6 be served concurrently with one another, but consecutive to Counts 1, 7, 8, and 9. Finally, the court ordered that Count 10 be served consecutively to all other counts. The court credited Soto-Portillo with 404 days of pre-sentence incarceration for Counts 1, 7, 8, and 9. Soto-Portillo filed a timely notice of appeal.

ANALYSIS

A. Ineffective Assistance of Counsel

¶9 Soto-Portillo states that his trial counsel argued several motions before trial, but his appellate counsel has raised no issues on appeal regarding those pretrial motions.⁴ He further notes that his counsel has "failed to present any issues in accordance with the Antiterrorism and Effective Death Penalty Act ("AEDPA")."

¶10 Soto-Portillo's arguments that appellate counsel failed to present issues regarding pretrial motions and the AEDPA appear to be claims of ineffective assistance of counsel. Because claims for ineffective assistance of counsel must be

⁴ Soto-Portillo does not, however, identify any specific motions or rulings with which he has a quarrel or specifically argue that the trial court erred in any way.

brought through Rule 32 proceedings, we will not address them in this direct appeal. See *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

B. Access to Case Law

¶11 Soto-Portillo states he “is a Mexican National that does not read or write English” and he argues that the Arizona Department of Corrections “does not provide inmates [and himself in particular] meaningful access to case law,” especially “Spanish-language legal materials.” While inmates have a right to meaningful access to the courts, there are alternative means to achieve this goal. *Lewis v. Casey*, 518 U.S. 343, 350 (1996). One method is to provide an inmate with assistance from persons trained in the law. *Id.* at 351. The tools that are required to be provided to inmates are those that are necessary for them to attack their sentences and challenge the conditions of their confinement. *Id.* at 355. A court need not order direct library access to inmates. *Knight v. Superior Court (Ybarra)*, 161 Ariz. 551, 555, 779 P.2d 1290, 1294 (App. 1989) (citations omitted).

¶12 In this case, counsel had represented Soto-Portillo throughout the proceedings, both at the superior court and on appeal. Further, his hand-written supplemental brief appears to belie his assertion that he cannot read or write English, and it contains numerous citations to authority, indicating that he, or someone assisting him, has had extensive access to legal

materials. Thus, even assuming that Soto-Portillo was denied access to a law library, alternative means of legal assistance were available to him. Therefore, we find no error, much less fundamental error, relating to Soto-Portillo's access to legal materials.

C. Vienna Convention

¶13 Soto-Portillo next asks us to decide whether his right to consular notification under Article 36 of the Vienna Convention was violated and whether this had an impact on the voluntariness of his statements made to police. Soto-Portillo did not raise this issue at trial, and therefore has waived this issue on appeal.⁵ Further, Soto-Portillo does not argue how consular contact would have benefited him in this case or how lack of consular contact created prejudicial error. See *State v. Valverde*, 220 Ariz. 582, 585, ¶ 12, 208 P.3d 233, 236 (2009) ("The defendant bears the burden of proving both that the error was fundamental and that the error caused him prejudice")

⁵ Even had Soto-Portillo raised this issue, we find no error. "Article 36 of the [Vienna Convention] does not create rights to consular access or notification that are enforceable by detained individuals in a judicial proceeding." *State v. Sanchez-Llamas*, 108 P.3d 573, 578 (Or. 2005), *aff'd*, 548 U.S. 331 (2006). Although Article 36 claims may be used as part of a broader challenge to the voluntariness of statements, "[N]either the Vienna Convention itself nor our precedents applying the exclusionary rule support suppression of [an Appellant's] statements to police." *Sanchez-Llamas v. Oregon*, 548 U.S. 331, 350 (2006).

(citing *State v. Henderson*, 220 Ariz. 561, 567, ¶ 20, 115 P.3d 601, 607 (2005)).

¶14 The trial court determined that Soto-Portillo's statements to police were voluntary based on the police officer's testimony and the evidence presented. Because substantial evidence supports its ruling, we find no abuse of discretion, much less any fundamental error.

D. Juror Questions

¶15 Soto-Portillo finally argues that it was error to allow the court to read questions submitted by the jury on account that they were leading and that they compromised his right to effective assistance of counsel. Soto-Portillo specifically argues against a juror question asking "[a]re there any streetlights outside of your home." Appellant's trial counsel specifically waived any objection to the court asking the question to the witness by saying "no" when asked if she objected. Even assuming the question was improper, it bears no relevance on the ultimate issue of guilt and we do not find any abuse of discretion, much less fundamental error, in allowing the juror questions to be asked.

¶16 With regard to the claim that the juror questions compromised effective assistance of counsel, this Court does not review such claims on direct appeal, as discussed above.

E. Other Issues

¶17 We have reviewed the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. We have, however, found none. The evidence presented at trial was substantial and supports the verdicts, and the sentences were within the statutory limits. Counsel represented Soto-Portillo at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶18 After the filing of this decision, Counsel's obligations in this appeal have ended. Counsel need do no more than inform Soto-Portillo of the status of the appeal and of his future options, unless Counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Soto-Portillo has thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶19 Soto-Portillo's convictions and sentences are affirmed.

 /s/
RANDALL M. HOWE, Judge

CONCURRING:

 /s/
MAURICE PORTLEY, Presiding Judge

 /s/
PATRICIA A. OROZCO, Judge