

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: 06/26/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
)
 Appellee,)
)
 v.) **MEMORANDUM DECISION**
) (Not for Publication -
 LOUIE RITO OJEDA,) Rule 111, Rules of the
) Arizona Supreme Court)
 Appellant.)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-1134884-001

The Honorable Susan M. Brnovich, 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
Attorneys for Appellant

O R O Z C O, Judge

¶1 Louie Rito Ojeda (Defendant) appeals his conviction and sentence for third degree burglary, a class four felony.

¶2 In accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), Defendant's counsel submitted a brief advising this court that, after a complete review of the record on appeal, he found no arguable question of law that was not frivolous. This court granted Defendant the opportunity to file a supplemental brief in propria persona, which he did. Our obligation on appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). 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 (2003), 13-4031 (2010), and -4033.A.1 (2010). Finding no reversible error, we affirm.

PROCEDURAL AND FACTUAL HISTORY¹

¶3 While watching surveillance footage, B. Moore, a security guard for the Central Arizona Project (CAP), observed two individuals, Defendant and an accomplice, in a fenced storage yard (Core Yard) while watching a surveillance video. Moore had not received notice of any workers scheduled to be working in the

¹ On appeal, we view the facts in the light most favorable to sustaining the conviction. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

Core Yard that day and did not see any CAP vehicles in the surrounding area. After determining these individuals were not CAP employees, Moore notified C. Cole, an agent/police officer for CAP who was patrolling the area by helicopter. When Cole arrived at the Core Yard, he noticed the two individuals trying to move a spool of wire. After Defendant and his accomplice noticed the helicopter hovering above, they briefly hid under a trailer before running in separate directions. From the helicopter, Cole directed Defendant to "get on the ground," but Defendant continued to flee before surrendering.

¶14 Defendant was charged with one count of third degree burglary, a class four felony, alleging Defendant entered or remained unlawfully in or on "a non-residential structure" of CAP with the intent to commit a theft or a felony therein.

¶15 A jury trial commenced and on the second day of trial the State made a motion to amend the Information. The State sought a change of language in the charging document from "a non-residential structure" to "a fenced commercial yard." The trial court granted the State's motion over objection by Defendant's counsel, reasoning that the requested amendment did not change the nature of the offense.

¶16 The jury found Defendant guilty of burglary in the third degree. Defendant was sentenced to a slightly mitigated

term of nine years' imprisonment with forty-seven days of presentence incarceration credit. Defendant timely appealed.

DISCUSSION

¶17 Defendant, in his supplemental brief, argues that what he "plead [sic] not guilty to and went to trial for is not what [he] was found guilty on [sic] and sent to prison for." Defendant objects to the court allowing the State to amend the charge from burglary of a non-residential structure to burglary of a fenced commercial yard because that was "what the evidence shows but is not what [he was] charged with."

¶18 Arizona Rule of Criminal Procedure 13.5 allows for the amendment of charges. Specifically, subsection b states that a charge "may be amended only to correct mistakes of fact or remedy formal or technical defects." Ariz. R. Crim. P. 13.5.b. "A defect may be considered formal or technical when its amendment does not operate to change the nature of the offense charged or to prejudice the defendant in any way." *State v. Bruce*, 125 Ariz. 421, 423, 610 P.2d 55, 57 (1980). Further, Rule 13.5.b provides "[t]he charging document shall be deemed amended to conform to the evidence adduced at any court proceeding."

¶19 In ruling on the motion to amend, the court stated, "[T]he question is whether or not the amendment requested changes the nature of the offense, and in this case it doesn't change the nature of the offense. It's still a burglary in the third degree

that occurred at that same address so I'm going to allow the amendment." When addressing the issue of prejudice, the court noted that "there will be no prejudice to the defendant since it's apparent from opening statements that everybody was aware that this was a fenced commercial yard." We find no error in the trial court's reasoning.

CONCLUSION

¶1 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and substantial evidence supported the jury's finding of guilt. Defendant was present and represented by counsel at all critical stages of the proceedings.² At sentencing, Defendant and his counsel were given an opportunity to speak and the court imposed a legal sentence, giving Defendant proper presentence incarceration credit.

¶10 Counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do nothing more than inform Defendant of the status of the appeal

² Defendant was allowed to leave the courtroom after the court recessed for jury deliberations, but he did not return for the final verdict. A bench warrant was issued for his arrest and he was arrested six days later. Sentencing was not delayed. See A.R.S. § 13-4033.C (2010).

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). The Defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.

¶11 For the foregoing reasons, Defendant's conviction and sentence are affirmed.

/S/

PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

PHILIP HALL, Judge

/S/

JOHN C. GEMMILL, Judge