

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: 9/5/2013  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 12-0390  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
)  
JUSTIN LEE MARTIN, ) (Not for Publication -  
) Rule 111, Rules of the  
Appellant. ) Arizona Supreme Court)  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR2009-177237-001

The Honorable Daniel G. Martin, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
By Joseph T. Maziarz, Acting Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Droban & Company, P.C. Anthem  
By Kerrie M. Droban  
Attorneys for Appellant

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G E M M I L L, Judge

¶1 Justin Lee Martin appeals from his convictions for five counts of armed robbery, class 2 dangerous felonies, five counts of kidnapping, class 2 dangerous felonies, four counts of

misconduct involving weapons, class 4 dangerous felonies, two counts of theft by means of transportation, class 3 felonies, one count of attempted armed robbery, a class 3 dangerous felony, and one count of second-degree burglary, a class 3 felony. Martin's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she searched the record and found no arguable question of law. She requests that this court examine the record for fundamental error. Martin was afforded the opportunity to file a *pro se* supplemental brief but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). After our review of the record, we affirm the jury's verdicts and the sentences of the trial court.

#### **FACTS AND PROCEDURAL HISTORY**

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 Martin's convictions arose from a series of five incidents occurring in Paradise Valley between October 26, 2009 and December 4, 2009.<sup>1</sup> At trial, the State presented evidence

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<sup>1</sup> A mistrial occurred on five charges related to a sixth incident, and the State subsequently dismissed those charges.

that on October 26, 2009, as. K.W. and. K.W. pulled into the garage of their home in Paradise Valley, an armed man accosted them. The gunman ordered Mr. K.W. to the ground and told Mrs. K.W. to walk around the vehicle and sit next to Mr. K.W. The gunman restrained them with zip ties and began taking property and asking questions about property inside the house. Eventually, a struggle ensued between the gunman and Mr. K.W., and Mrs. K.W. escaped to a neighbor's house to call police. Mrs. K.W. later testified that the gunman took their vehicle when he left the house.

¶14 On November 10, 2009, W.C. was confronted by an armed man in the hallway of his Paradise Valley home. W.C. escaped by quickly ducking into an adjacent room and exiting the house through the garage. W.C. called police and the gunman fled without taking any property from the house.

¶15 On November 16, 2009, a masked gunman confronted K.M. in the garage of his mother's house, where he lived with his mother M.M. A struggle between the gunman and K.M. took place, which included M.M. attempting to assist her son by hitting the gunman with a vacuum cleaner. K.M. yelled to M.M. to flee back into the house and call the police. The struggle ended only when the gunman pulled out his gun and ordered K.M. to the ground. While walking back into the house at the gunman's orders, K.M. testified that he quickly turned around, closed the

door allowing entry into the house from the garage, and locked it before the gunman could enter the house. K.M. then called police, and the gunman fled.

¶16 On November 23, 2009, M.R. was watching television in his Paradise Valley home when an armed man burst through the door and ordered him to the ground. The gunman tied M.R.'s hands and feet and began asking questions about where M.R. kept his valuable property. After some time, the gunman took M.R.'s car and fled with some of M.R.'s valuables.

¶17 Finally, on December 4, 2009, a gunman entered the Paradise Valley home of S.C. and K.C. as they prepared to go to bed for the evening. The gunman ordered them to lie on the floor and demanded that they open a safe located in their home. When S.C. refused to recite the combination, the gunman threatened to kill him. Later, after refusing another demand for the combination, the gunman also threatened to kill K.C. Eventually, the gunman moved them to a kitchen pantry and tied the door shut. The gunman eventually left, taking some valuables with him.

¶18 Though none of the victims could identify the gunman, the State presented evidence that tied Martin to the crimes. Martin's uncle, Darrel Thompson, testified as part of a plea bargain that Martin committed the crimes against Mr. and Mrs. W.

and W.C.<sup>2</sup> Thompson also testified that he acted as Martin's getaway driver for those incidents. Because he was a previously convicted felon out on parole, Thompson wore a tracking device that monitored his location through GPS. Through this tracking device, the State submitted evidence that showed Thompson's proximity to the robberies about which he testified. Cell phone records obtained from Martin's then-girlfriend, S.S., showed that Martin was with Thompson at the time of the robberies about which Thompson testified. Further records obtained from cell towers in Paradise Valley showed that Martin's phone was located in or near Paradise Valley at or around the times of each incident. Additional witness testimony revealed that Martin previously worked on S.C. and K.C.'s home as a contractor and that he would have known the layout of the house. Finally, a Paradise Valley police officer testified that he saw Martin's car in the area around S.C. and K.C.'s home while responding to S.C. and K.C.'s 9-1-1 call.

¶19 After the jury returned the guilty verdicts, the trial court conducted a hearing before the jury on aggravating and mitigating factors. Before sentencing, a bench trial was held to determine Martin's prior convictions. After the presentation of evidence, the trial court found that Martin had two prior

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<sup>2</sup> Thompson also testified to involvement in the incident that resulted in the five charges the State dismissed after trial.

felony convictions for dangerous armed robbery. The trial court then sentenced Martin pursuant to Arizona Revised Statutes ("A.R.S.") sections 13-706(A),(F) and 13-703<sup>3</sup> to life without the possibility of release for 25 years for each count of armed robbery, kidnapping, and attempted armed robbery, 20 years for one count of theft of means of transportation, 25 years for the other count of theft by means of transportation, 16 years for each count of misconduct involving weapons, and 25 years for the count of second degree burglary. The sentences for the counts related to each respective home invasion incident were ordered to be served concurrently, but each of these groupings was ordered to be served consecutively to one another. Finally, Martin received 923 days of presentence credit, applied to his first grouping of concurrent sentences.

¶10 Martin timely appeals his convictions. This court has jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031 and 13-4033.

#### DISCUSSION

¶11 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports the convictions and the sentences imposed fall within the range

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<sup>3</sup> We cite the current version of applicable statutes because no revisions material to this decision have occurred since the events in question.

permitted by law. As far as the record reveals, Martin was represented by counsel or effectively waived his right to counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶12 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Martin of the disposition 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. Martin has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

**CONCLUSION**

¶13 Martin's convictions and sentences are affirmed.

/s/

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JOHN C. GEMMILL, Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Presiding Judge

/s/

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MICHAEL J. BROWN, Judge