

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: 9/17/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0667
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
ANNETTE L. ROMO,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-145516-004

The Honorable Cari A. Harrison, Judge
The Honorable Jo Lynn Gentry-Lewis, Judge

AFFIRMED AS CORRECTED

Thomas C. Horne, Arizona Attorney General Phoenix
By Joseph T. Maziarz, Chief Counsel Criminal Appeals
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
By Charles R. Krull, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Annette L. Romo timely appeals from her conviction and sentence for trafficking in stolen property, second degree, a class three felony. Ariz. Rev. Stat. ("A.R.S.") § 13-2307

(2010). After searching the record on appeal and finding no arguable question of law that was not frivolous, Romo's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Romo to file a supplemental brief *in propria persona*, but Romo did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Romo's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 On August 31, 2011, a manager at a Home Depot informed police that stolen credit card numbers had been used by telephone to purchase a compressor, chainsaw, wrench, and chlorine tablets. Later that day, Romo went to the Home Depot with her boyfriend and two individuals, G.M. and J.V. G.M. and J.V. went inside and picked up the items purchased.

¶13 The four left the Home Depot, and G.M. and J.V. asked Romo's boyfriend if he wanted the items or if either he or Romo knew anybody who might be willing to buy the items. Romo telephoned a person she knew who managed a tow yard, and then

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Romo. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

the four drove to the tow yard. The manager of the tow yard bought the compressor, chainsaw, and wrench. Thereafter, the four left the tow yard, and the police subsequently arrested them when they stopped at a convenience store.

¶14 A jury convicted Romo of trafficking in stolen property, second degree and also found the presence of an accomplice as an aggravating circumstance. After the superior court found Romo competent for sentencing, at a "priors hearing," the State proved Romo was a category 2 non-dangerous repetitive offender. The superior court sentenced Romo to the presumptive term of imprisonment of 6.5 years with 181 days presentence incarceration credit.

DISCUSSION

¶15 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Romo received a fair trial. Although Romo was present on the first day of trial, she was voluntarily absent from the remainder of the trial and, therefore, waived her presence under Arizona Rule of Criminal Procedure 9.1. She was, however, represented by counsel at all stages of the proceedings² and was present at all other critical stages.

²At sentencing, Romo suggested counsel may have been ineffective because he would not talk to her except right before hearings, threatened to withdraw, and lied to the court. A defendant may bring ineffective assistance of counsel claims

¶16 The evidence presented at trial was substantial and supports the verdict. The jury was properly comprised of eight members and the court properly instructed the jury on the elements of the charge, Romo's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Romo was given an opportunity to speak at sentencing, and her sentence was within the range of acceptable sentences for her offense.

¶17 Although the superior court sentenced Romo as a category 2 non-dangerous repetitive offender, the sentencing minute entry erroneously referenced A.R.S. § 13-704 (Supp. 2012) -- a statute only applicable to dangerous offenders. We therefore correct the minute entry to delete the reference to A.R.S. § 13-704.

CONCLUSION

¶18 We decline to order briefing and affirm Romo's conviction and sentence.

¶19 After the filing of this decision, defense counsel's obligations pertaining to Romo's representation in this appeal have ended. Defense counsel need do no more than inform Romo of the outcome of this appeal and her future options, unless, upon

only in a Rule 32 post-conviction procedure, not on direct appeal. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

