IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ROBERT LEE SIGLER, *Appellant*.

No. 1 CA-CR 12-0768
FILED 11-19-2013

Appeal from the Superior Court in Maricopa County
No. CR2012-103602-001
The Honorable Carolyn K. Passamonte, Judge Pro Tempore

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz

Counsel for Appellee

Maricopa County Legal Defender's Office, Phoenix
By Cynthia D. Beck

Counsel for Appellant

MEMORANDUM DECISION

Judge Donn Kessler delivered the decision of the Court, in which Presiding Judge Andrew W. Gould and Judge Patricia A. Orozco joined.

K E S S L E R, Judge:

¶1 Defendant-Appellant Robert Sigler ("Sigler") was tried and convicted of possession of a dangerous drug, a class 4 felony, and sentenced to eight years' imprisonment. Counsel for Sigler filed a brief in accordance with *Anders v. California,* 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Finding no arguable issues to raise, counsel requests that this Court search the record for fundamental error. Sigler was given the opporitunity to but did not file a pro per supplemental brief. For the reasons that follow, we affirm Sigler's conviction and sentence.

FACTUAL AND PROCEDURAL HISTORY

¶2 City of Phoenix Police Officer N.P. stopped and arrested Sigler, who had been riding a bicycle when Officer N.P. pulled up behind him.[1] While conducting a search incident to arrest, Officer N.P. found a pouch of tobacco in Sigler's front left pants pocket. Inside the pouch, Officer N.P. saw a clear baggie that had alien heads on it. Based on his previous training and experience, Officer N.P. concluded that the substance inside the baggie was methamphetamine.

¶3 Officer N.P. removed the baggie from the pouch of tobacco and placed the baggie into a small evidence bag. He then secured the evidence bag on his clipboard in the front seat of his police vehicle. As Officer N.P. approached Sigler to complete the search, Sigler stated, "I can't go to prison or jail for that shit."

¶4 Officer N.P. finished searching Sigler and read him his *Miranda* rights.[2] Sigler confirmed that he understood his *Miranda* rights

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[1] The parties stipulated that Officer N.P. had a "valid and lawful reason to stop [Sigler] and place [him] under arrest."
[2] *Miranda v. Arizona*, 384 U.S. 436 (1966).

and continued to speak to Officer N.P.[3] Sigler told Officer N.P. that he purchased the drugs from "Jay Jay" for ten dollars and that he used "meth so much that it no longer gets him high."

¶5 After the interview, Officer N.P. drove his patrol vehicle to a nearby Walmart parking lot and waited for Officer D.R., a controlled substance officer. When Officer D.R. arrived, he took possession of the methamphetamine and field tested it. After giving the methamphetamine to Officer D.R., Officer N.P. took Sigler to jail for booking. Phoenix Police Department forensic scientist F.S. tested the substance contained in the baggie and determined that it was 160 milligrams of methamphetamine, a dangerous drug.

¶6 Sigler was charged with possession of a dangerous drug and pled not guilty. An eight-person jury convicted Sigler of possession of a dangerous drug. The superior court sentenced him to a mitigated, but enhanced, eight-year prison term after noting at least two prior felony convictions and weighing other mitigating circumstances. Sigler was awarded 272 days of presentence incarceration credit.

STANDARD OF REVIEW

¶7 In an *Anders* appeal, this Court must review the entire record for fundamental error. *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Error is fundamental when it affects the foundation of the case, deprives the defendant of a right essential to his defense, or is an "error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (internal quotes omitted).

DISCUSSION

¶8 After careful review of the record, we find no meritorious grounds for reversal of Sigler's conviction or modification of his sentence. The record reflects that Sigler had a fair trial and all proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Sigler was represented by counsel at all stages of trial, was given the opportunity to speak at sentencing, and the sentence imposed was within the sentencing range for Sigler's offense.

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[3] During the interview, Officer N.P. made neither threats toward nor promises to Sigler, and his weapon remained in its holster.

¶9 Further, there is sufficient evidence in the record to support Sigler's conviction. In reviewing the sufficiency of the evidence at trial, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against the defendant. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). "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) (quoting *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976)).

¶10 To commit possession of a dangerous drug, a person must knowingly possess a substance that is, in fact, a dangerous drug. Arizona Revised Statutes section 13-3407(A)(1) (Supp. 2012).[4] Methamphetamine is a dangerous drug. A.R.S. § 13-3401(6) (Supp. 2012).

¶11 Here, Officer N.P. testified that after he found and secured the baggie, Sigler called out, "I can't go to prison or jail for that shit." Sigler's statement shows that he knew Officer N.P. had found something. Furthermore, Officer N.P. testified that Sigler admitted to buying methamphetamine from "Jay Jay" for ten dollars and said that he used "meth so much that it no longer gets him high." These statements collectively show that Sigler knew he possessed a dangerous drug. Finally, F.S. testified that the substance in the baggie was, in fact, 160 milligrams of methamphetamine, a dangerous drug.

¶12 In her closing argument, defense counsel argued that because Officer D.R. did not testify, the State had not established a chain of possession and failed to demonstrate that the substance tested by F.S. was the same substance that Officer N.P. discovered in Sigler's possession. Although the State is required to establish a chain of possession "which avoids any claim of substitution, tampering or mistake," *State v. Lopez*, 23 Ariz. App. 554, 556, 534 P.2d 768, 770 (1975), "the State is not required to exclude every remote possibility of its happening." *State v. Davis*, 110 Ariz. 51, 53, 514 P.2d 1239, 1241 (1973). Nor is the State required to "call forth every person who comes in contact with the evidence where there is nothing to suggest the probability of substitution or tampering." *Lopez*, 23 Ariz. App. at 556, 534 P.2d at 770. "[W]here there is no evidence to suggest any possibility of substitution or tampering, [the evidence] may properly be [admitted]." *Davis*, 110 Ariz. at 53, 514 P.2d at 1241.

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[4] We cite the current versions of the applicable statutes when no revisions material to this decision have since occurred.

¶13 Here, defense counsel presented no evidence suggesting any possibility of substitution, tampering, or mistake. Further, Officer N.P. and F.S. both testified about the policies and procedures that govern impounding and retrieving evidence, identified the baggie and substance, and stated that neither appeared to have been tampered with in any way. Thus, the jury reasonably could have found that the substance Sigler possessed at the time of his arrest was, in fact, methamphetamine. Accordingly, we conclude that there is sufficient evidence to support Sigler's conviction and sentence.

¶14 We also find no error in the search of Sigler's pocket as a search incident to arrest. Although Officer N.P. had not formally arrested Sigler at the time of the search, he had stopped him on an outstanding warrant and Sigler was not free to leave, thus being under de facto arrest. At that point, the search of his pockets was valid as a search incident to arrest. *State v. Weinstein*, 190 Ariz. 306, 311, 947 P.2d 880, 885 (App. 1997).

CONCLUSION

¶15 For the foregoing reasons, we affirm Sigler's conviction and sentence. Upon the filing of this decision, counsel shall inform Sigler of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Sigler has thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

Ruth A. Willingham · Clerk of the Court
FILED: mjt