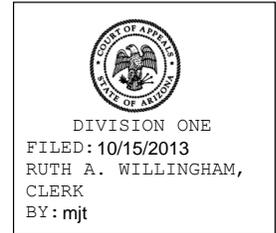


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0769
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
ROMEO CLARENCE SCOLLI,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-137642-001

The Honorable Robert E. Miles, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Joseph T. Maziarz, Section 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

T H U M M A, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S.

738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878

(1969). Counsel for defendant Romeo Scolli has advised the court that, after searching the entire record, counsel has found no arguable question of law and asks this court to conduct an *Anders* review of the record. Scolli was given the opportunity to file a supplemental brief pro se, but made no such filing. Finding no reversible error, Scolli's conviction and resulting sentence are affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 While on routine duty, Arizona Department of Public Safety Officer McNulty saw a motorcycle in a motel parking lot that had several inconsistencies, indicating it had been stolen. The motorcycle was spray painted black, had an invalid license plate and a modified vehicle identification number (VIN). The ignition lock had been bypassed and the engine was hotwired. The motorcycle had both a radar detector and a keyed security device. After researching the motorcycle's correct VIN, Officer McNulty determined it was stolen.

¶3 Officer McNulty then spoke with the front desk clerk at the motel and viewed motel video surveillance recordings, which were later shown at trial. The video showed the motorcycle driver enter the motel and reserved a room. The driver was

¹ This court views the facts "in the light most favorable to sustaining the verdict, and resolve[s] all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).

described as a white male with full-sleeve and neck tattoos, wearing a white helmet and a white t-shirt with a red diamond logo. The front desk clerk testified that he recognized the driver as Scolli, that he signed the hotel form as Romero Scolli and he knew his first name was Romeo.

¶4 Officer McNulty impounded the motorcycle, returned to the motel and saw Scolli and three others enter Scolli's motel room. Officer McNulty and two other uniformed officers knocked on Scolli's motel room door. When a woman answered, the officers "ordered all occupants to exit the room for officer safety purposes." When Scolli exited the room, Officer McNulty handcuffed and arrested him.

¶5 The officers searched the motel room and Scolli for protective purposes. During the room search, Officer McNulty noticed in plain view a white helmet matching the helmet from the surveillance video. During a search of Scolli, Officer McNulty found a key in Scolli's pocket. Officer McNulty then read Scolli his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966) and asked about the key; Scolli stated the key would work any lock. Scolli's statement was admitted at trial without objection.

¶6 Scolli was charged with one count of Theft of Means of Transportation, a class 3 felony. At trial, a lock expert testified that the lock on the motorcycle had a possible 6,500

key combinations and the key recovered from Scolli fit the lock. A forensic expert testified he matched two fingerprints recovered from the radar detector to Scolli. Scolli's ex-wife testified the license plate on the motorcycle was hers and she had seen the license plate in her garage. At the close of the State's case-in-chief, Scolli's counsel moved for a judgment of acquittal based on a lack of substantial evidence, which was denied.

¶7 Although present for the first day of trial, Scolli failed to appear for the second day of trial without notifying anyone. The superior court found Scolli had voluntarily absented himself from the proceedings and issued a bench warrant. Scolli was not present for the remainder of the trial. Witness identifications of Scolli were then made from memory and from a photograph of Scolli that was admitted into evidence.

¶8 After a two-day trial, and after being instructed on the law and hearing closing arguments, the jury found Scolli guilty as charged. Scolli was later apprehended and held in custody pending sentencing. At sentencing, based on the evidence presented, the superior court found Scolli had three prior historical felony convictions. The court sentenced Scolli to a prison term of 10 years with credit for time served.

¶9 Scolli timely appealed his conviction and resulting sentence. This court has jurisdiction over his appeal pursuant

to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031, and -4033(A)(1) (2013).²

DISCUSSION

¶10 Counsel for Scolli advised this court that after a diligent search of the entire record, he found no arguable question of law. This court reviews Scolli's convictions and resulting sentences for reversible error. A review of counsel's brief and the record reveals no such error.

¶11 The record shows Scolli was represented by counsel at all stages of the proceedings and counsel was present at all critical stages. The evidence presented at trial was substantial and supports the verdict. From the record, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The sentence imposed was within the statutory limits. Neither counsel nor Scolli have raised any issues on appeal.

¶12 Although absent for the second day of trial, Scolli was informed of the date and time of trial and given notice by the superior court on several occasions that proceedings may go forward in his absence. Scolli has not provided any proper excuse for his failure to appear. There was no error in

² Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

proceeding with trial when Scolli failed to appear the second day. Ariz. R. Crim. P. 9.1.

¶13 From the record and as highlighted above, substantial trial evidence supports Scolli's conviction. See *State v. Sullivan*, 187 Ariz. 599, 603, 931 P.2d 1109, 1113 (App. 1996) (a verdict will be reversed only if there is a complete absence of "substantial evidence" to support the conviction). Finally, Scolli has not shown and the record does not reveal any reversible or prejudicial evidentiary error.

CONCLUSION

¶14 This court has read and considered counsel's brief and has searched the record provided for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.2d 89, 96 (App. 1999). From that review, the record reveals no reversible error. Accordingly, Scolli's conviction and sentence are affirmed.

¶15 Upon the filing of this decision, counsel's obligation to represent Scolli in this appeal has ended. Counsel must only inform Scolli of the status of the appeal and of Scolli's future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 57 (1984). Scolli shall have 30 days from the date of this decision to

proceed, if desired, with a pro se motion for reconsideration or petition for review.

/S/
SAMUEL A. THUMMA, Judge

CONCURRING:

/S/
MAURICE PORTLEY, Presiding Judge

/S/
DONN KESSLER, Judge