IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

GEORGE ARTHUR RICHIE, *Appellant*.

No. 1 CA-CR 16-0302
FILED 6-22-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-127292-001
The Honorable Jay R. Adleman, Judge

AFFIRMED

COUNSEL

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

The Hopkins Law Office PC, Tucson
By Cedric Martin Hopkins
Counsel for Appellant

George Arthur Richie
Appellant

MEMORANDUM DECISION

Presiding Judge Peter B. Swann delivered the decision of the court, in which Judge Kent E. Cattani and Judge Donn Kessler joined.

S W A N N, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), from George Arthur Richie's conviction and sentence for sale or transportation of dangerous drugs. We have reviewed the record for fundamental error, and we have considered the issues identified in Richie's supplemental briefs filed *in propria persona*. *See Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). We find no reversible error.

¶2 Richie contends that the state presented insufficient evidence to support his conviction. A person commits sale or transportation of a dangerous drug when he "knowingly . . . [t]ransport[s] for sale, . . . offer[s] to transport for sale . . ., sell[s], transfer[s] or offer[s] to sell or transfer a dangerous drug." A.R.S. § 13-3407(A)(7). Methamphetamine is a dangerous drug. A.R.S. § 13-3401(6)(c)(xxxviii).

¶3 The state presented evidence that undercover police officers struck up a conversation with Richie at a convenience store and asked him whether he could obtain methamphetamine for them. Richie responded that he could. Richie led the officers to the parking lot of a nearby apartment complex, where he accepted $20 from them. Richie then walked into the interior of the complex. He returned a short time later and handed the officers a small baggie of a clear, glass-like substance later confirmed to be approximately 402 milligrams of usable methamphetamine. The officers did not immediately arrest Richie, because they wished to preserve the integrity of their long-term undercover operation in the area. The foregoing evidence was more than sufficient to show sale or transportation of a dangerous drug. Contrary to Richie's contentions, the state was not required to provide photographic evidence of the methamphetamine changing hands. The state presented evidence establishing a proper chain of custody for the methamphetamine, and the state provided reasonable explanations as to why the officers did not track the purchase money or arrest Richie on the spot.

¶4 We also reject Richie's contention that the state failed to prove that he was the person who committed the offense. Richie claims that the only officer who identified him did not testify at the trial, which rendered the identification evidence inadmissible and violated his rights under the Confrontation Clause of the Sixth Amendment. But the record provides no basis for Richie's argument. The state presented evidence that the officer who executed Richie's eventual arrest had obtained records pertaining to Richie from the Department of Motor Vehicles. The arresting officer, who had no involvement in the actual drug purchase and did not testify at the trial, provided the records to one of the undercover officers and told him Richie's name. It was the undercover officer, however, who concluded that the photograph in Richie's records depicted the person from whom he had purchased the methamphetamine. And that undercover officer did testify at the trial. His testimony was sufficient to establish that Richie was the correct defendant. The arresting officer's testimony was not critical. Further, in view of that officer's limited participation, the court was not, as Richie contends, required to inform the jury of the officer's criminal history.

¶5 We discern no fundamental error in Richie's conviction. Richie was present and represented by counsel at all critical stages, the jury was properly comprised and instructed, and there is no evidence of juror misconduct or bias.

¶6 Further, we discern no fundamental error in Richie's sentence. Richie was permitted to speak at the sentencing hearing, the court stated on the record the materials it considered and the factors it found in imposing sentence, and the court imposed a lawful mitigated sentence of six years of imprisonment. *See* A.R.S. § 13-3407(B)(7), (E). To the extent the record indicates that the court miscalculated Richie's presentence incarceration, any error was in Richie's favor and the state has not cross-appealed. *See State v. Dawson*, 164 Ariz. 278, 281–82 (1990).

¶7 For the foregoing reasons, we affirm Richie's conviction and sentence. Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584–85 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Richie of the status of this appeal and his future options. *Id.* Richie has 30 days from the date of this decision to file a petition for review *in propria persona*. *See* Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Richie has 30 days from the date of this decision in which to file a motion for reconsideration.

AMY M. WOOD • Clerk of the Court
FILED: AA