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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

NICHOLAS ARCHIE BEGAY, *Appellant*.

No. 1 CA-CR 16-0332
FILED 3-23-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-121220-001
The Honorable Peter C. Reinstein, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Terry J. Adams
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

H O W E, Judge:

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Nicholas Archie Begay has advised this Court that counsel found no arguable questions of law and asks us to search the record for fundamental error. Begay was convicted of one count of theft of means of transportation, a class three felony; one count of theft of a credit card, a class five felony; and one count of fraudulent use of a credit card, a class one misdemeanor. Begay was given an opportunity to file a supplemental brief in propria persona; he has not done so. After reviewing the record, we affirm Begay's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Begay. *See State v. Fontes*, 195 Ariz. 229, 230 ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶3 In May 2015, M.M. dropped her Mazda off at a Tempe car wash to get it detailed. M.M. decided to go home instead of waiting at the car wash and told the employees that she would come back to pick up the car. A couple of hours later, Begay approached a service manager and told the manager that he was there to pick up the Mazda. Although Begay did not have a ticket for the car, he convinced the manager that the car belonged to him. The manager gave Begay the keys.

¶4 That evening, M.M. returned to the car wash to retrieve her car. After unsuccessfully looking for the Mazda, the store manager called the Tempe Police Department. When a Tempe officer arrived, the store manager showed the officer the surveillance video. On the recording a man was seen walking up to the service manager and retrieving the Mazda's keys. Both the store manager and the Tempe officer were able to see the face of the man who took M.M.'s car keys. The store manager was unable to make a copy of the video because the system was new and he did not know

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how to fully operate it at that time. After the Tempe officer interviewed the car wash employees and M.M., M.M. reported her car stolen.

¶5 Around nine o'clock that night, a Phoenix police officer located the stolen Mazda and stopped the car. Begay was the only person in the car. Begay stated that he had permission to drive the car but could not answer who the car was registered to and changed his story about who gave him permission. Finally, Begay told the police officer that he had received the keys from someone at the car wash. Begay further told the officer that he had been "cruising around" all day. The police officer arrested Begay.

¶6 While conducting a search incident to arrest, an officer found M.M.'s credit card in Begay's pocket along with a receipt from a Circle K store for \$25. The card number on the receipt had the same last four numbers as M.M.'s card found in Begay's pocket. Although Begay initially denied using M.M.'s credit card, he later admitted that he used the card to put gas in the car.

¶7 Before trial, both sides stipulated that Begay had one prior felony conviction. At Begay's trial, M.M. testified that she had not given anyone other than the car wash employees permission to drive her car. M.M. also described that she kept a credit card in her car in case of an emergency and that she did not give anyone permission to use the card. Additionally, both the store manager and the Tempe officer identified Begay as the person that they saw in the car wash's surveillance video. Finally, the Phoenix officer testified that Begay was the sole occupant of the Mazda, that M.M.'s credit card was found in Begay's pocket, and that Begay told him that he had used the credit card to purchase gas.

¶8 After the State rested its case-in-chief, Begay moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure 20 for all three counts. The trial court denied the motion. The jury convicted Begay on all three counts.

¶9 The trial court conducted the sentencing hearing in compliance with Begay's constitutional rights and Arizona Rule of Criminal Procedure 26. The trial court considered Begay's prior felony conviction and the fact that the theft was done for pecuniary gain as aggravating factors. The court also considered the specific facts of the case and Begay's mental health issues as mitigating factors. The trial court sentenced Begay to concurrent sentences of 6 years' imprisonment for the theft of means of transportation conviction and 2.25 years' imprisonment for the theft of a

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credit card conviction, applying 347 days' presentence incarceration credit to each sentence. On the fraudulent use of credit card conviction, the trial court imposed a terminal disposition given the two proceeding sentences.

DISCUSSION

¶10 We review Begay's convictions and sentences for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512 ¶ 12, 260 P.3d 309, 312 (App. 2011). Counsel for Begay has advised this Court that after a diligent search of the entire record, counsel has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, and find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel represented Begay at all stages of the proceedings, and the sentences imposed were within the statutory guidelines. We decline to order briefing and affirm Begay's convictions and sentences.

¶11 Upon the filing of this decision, defense counsel shall inform Begay of the status of the appeal and of his future options. 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). Begay shall have 30 days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review.

CONCLUSION

¶12 For the foregoing reasons, we affirm.



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