

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JORGE ANDREW ROCHA, JR., *Appellant*.

No. 1 CA-CR 16-0876
FILED 7-20-2017

Appeal from the Superior Court in Maricopa County
No. CR 2015-104551-001
The Honorable Gregory Como, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Edward F. McGee
Counsel for Appellant

STATE v. ROCHA
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Margaret H. Downie delivered the decision of the Court, in which Judge Kenton D. Jones and Judge Donn Kessler¹ joined.

D O W N I E, Judge:

¶1 Jorge Andrew Rocha Jr. appeals his conviction for misconduct involving weapons, a class 4 felony, in violation of Arizona Revised Statutes (“A.R.S.”) section 13-3102(A)(4). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for reversible error. See *State v. Richardson*, 175 Ariz. 336, 339 (App. 1993). Defendant was given the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

FACTS AND PROCEDURAL HISTORY

¶2 A police officer stopped a vehicle Rocha was driving because it had “several cracks on its windshield.” The officer saw that the front-seat passenger and Rocha were “making movements” down towards their waistbands and the vehicle floorboards. Rocha and the passengers were removed from the vehicle and the officer saw “a dagger knife” on the floorboard of the driver’s side. Rocha spontaneously stated that the dagger was his. He was charged with misconduct involving weapons.

¶3 A jury found Rocha guilty of the charged offense, and the court determined that he had at least two historical prior felonies. Rocha was sentenced to a mitigated term of six years’ imprisonment, with 54 days of presentence incarceration credit. We have jurisdiction over Rocha’s timely appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. § 13-4033(A)(1).

¹ The Honorable Donn Kessler, Retired Judge of the Arizona Court of Appeals, Division One, has been authorized to sit in this matter pursuant to Article VI, Section 3 of the Arizona Constitution.

STATE v. ROCHA
Decision of the Court

DISCUSSION

¶4 We have read and considered the brief submitted by Rocha's counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300. We find no reversible error. All proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offense charged. The record reflects no irregularity in the deliberation process.

¶5 In the opening brief, defense counsel lists, without elaboration, several issues that Rocha himself has identified. Most relate to the sufficiency of the evidence. "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 (1996). Viewing the evidence in the light most favorable to sustaining the verdict, *State v. Nihiser*, 191 Ariz. 199, 201 (App. 1997), we conclude the State presented substantial evidence of guilt.

¶6 The State was required to prove that Rocha knowingly possessed a deadly weapon while being a prohibited possessor. A.R.S. § 13-3102(A)(4). A deadly weapon is "anything that is designed for lethal use." A.R.S. § 13-3101(A)(1). Rocha's admission that the dagger was his and its location on the driver's-side floorboard was sufficient to establish that he knowingly possessed the weapon. A detective testified at trial about the dagger's design and identified it as a deadly weapon. The State also presented a witness who discussed criminal history documentation establishing that Rocha's civil rights had not been restored after his earlier felony convictions.

¶7 To the extent Rocha asserts ineffective assistance of counsel, that issue must be raised in proceedings pursuant to Rule 32. "Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of merit." *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002).

¶8 Rocha also states that plea offers extended to him were "unduly harsh, if not absurd." But the State "retains discretion to determine whether to make a plea offer, the terms of any offer, the length of time an offer will remain open, and the other particulars of plea." *Rivera-Longoria v. Slayton ex rel. County of Coconino*, 228 Ariz. 156, 159, ¶ 13 (2011).

STATE v. ROCHA
Decision of the Court

¶9 Finally, Rocha suggests his six-year mitigated sentence violated the Eighth Amendment. The Eighth Amendment prohibits “cruel and unusual punishments.” U.S. Const. amend. VIII. Courts, however, “are extremely circumspect in their Eighth Amendment review of prison terms.” *State v. Berger*, 212 Ariz. 473, 475, ¶ 10 (2006). A prison term violates the Eighth Amendment only if it is “so severe as to shock the conscience of society.” *State v. Davis*, 206 Ariz. 377, 388, ¶ 49 (2003) (citation omitted). Rocha has made no such showing. We “accord substantial deference to the legislature and its policy judgments as reflected in statutorily mandated sentences” and recognize that the Eighth Amendment “forbids only extreme sentences that are ‘grossly disproportionate to the crime.’” *Berger*, 212 Ariz. at 476, ¶ 13 (citation omitted). Rocha’s six-year mitigated sentence was within the statutory range and was the minimum the court could impose on a category three repetitive offender.

CONCLUSION

¶10 We affirm Rocha’s conviction and sentence. Counsel’s obligations pertaining to Rocha’s representation in this appeal have ended. Counsel need do nothing more than inform Rocha of the status of the appeal and his future options, unless counsel’s review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584–85 (1984). On the court’s own motion, Rocha shall have 30 days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.



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