

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



DIVISION ONE
FILED: 12/31/2009
PHILIP G. URRY, CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 08-0894
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
ELIAS RODRIGUEZ) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-107019-001 DT

The Honorable Sam J. Myers, Judge

AFFIRMED

Terry Goddard, Attorney General Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals Section
Attorney for Appellee

Bruce Peterson, Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorneys for Appellant

G E M M I L L, Judge

¶1 Elias Rodriguez ("Rodriguez") appeals from his conviction and sentence for trafficking in stolen property in the second degree, a class three felony. Rodriguez's counsel

filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. See *Smith v. Robbins*, 528 U.S. 259 (2000). Rodriguez was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 On January 29, 2008, at approximately 7:30 in the morning, R.L. visited a rental property she owned in Avondale, Arizona. The purpose of her visit was to "clean[] up after [her] previous tenant had moved out." When she arrived at the property, she noticed the front door of the house had been "kicked in." The door was not in this condition the previous day when she had visited the property, so she called the police for assistance and waited outside of the house for them to arrive.

¶4 Officer L. and another police officer responded to R.L.'s call. They entered her home and they did not find

anybody inside. Officer L. did notice, however, that copper piping was missing from the home's air conditioning unit. As Officer L. exited the house to speak with D.L., he saw two males on bicycles in an alleyway to the west of the house. The two men saw Officer L. look at them and "they immediately turned around" and "started off" down the alleyway. Officer L. was later able to identify one of the men as Rodriguez.

¶15 After speaking with R.L. and learning that the air conditioning unit was intact the previous day when R.L. had visited the property, Officer L. suspected that the missing copper pipes had been stolen from the house. Using his radio, Officer L. informed other police officers in the area that he had been dispatched to an "unsecure premise" and that copper piping had been taken from the residence. Officer C. was in the area when he heard this announcement over his radio and he went to a nearby recycling plant. The recycling plant was "the closest place where anybody would try to sell any kind of metal."

¶16 Officer C. arrived at the recycling plant at approximately 8:30 in the morning. As he was pulling into the plant, he saw a man leaving on a bicycle. Officer C. later determined that the man was Rodriguez. Once inside the plant, Officer C. spoke with the plant's cashier and the cashier informed Officer C. that she had just purchased copper piping

that morning. Officer C. called Officer L. and requested that he come to the recycling plant to inspect the pipes.

¶17 At the plant, the cashier showed the officers the receipt from the earlier copper transaction and a form the seller filled out in order to complete the transaction. On the form was a photocopy of the seller's driver's license. The receipt and the photocopied driver's license indicated that it was Rodriguez who sold the copper to the recycling plant. The cashier also showed the officers the surveillance video from that morning. The video showed Rodriguez selling copper to the cashier. The officers then took the copper that was sold to the recycling plant back to D.L's house and they were able to match it to the copper missing from the air conditioning unit.

¶18 Later that day, Officer C. arrested Rodriguez. As Officer C. was placing Rodriguez under arrest, Rodriguez asked if the arrest was "about the copper [he] sold today at the recycling place." He also stated that "[s]omebody gave me that to sell." After being read his *Miranda*¹ rights, Rodriguez agreed to speak with Officer C. During this conversation, Rodriguez admitted he knew the copper pipes were stolen and that he was paid \$25 to sell the pipes to the recycling plant. He also stated that another man committed the burglary and that the copper came from that burglary.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶9 Rodriguez was charged with one count of trafficking in stolen property in the second degree. After a trial by a jury, Rodriguez was found guilty as charged. In addition, the trial court found that the State had proven beyond a reasonable doubt that Rodriguez had two prior felony convictions for armed robbery and attempted sale of narcotic drugs. The trial court therefore sentenced Rodriguez to a slightly aggravated prison term of twelve years.

¶10 Rodriguez timely appeals his conviction and sentence. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), 13-4033(A) (Supp. 2009), and Article 6, Section 9, of the Arizona Constitution.

DISCUSSION

¶11 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentence imposed falls within the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Rodriguez was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶12 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85,

684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Rodriguez of the disposition 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. Rodriguez has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶13 The conviction and sentence are affirmed.

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
JON W. THOMPSON, Judge

_____/s/_____
PATRICK IRVINE, Judge