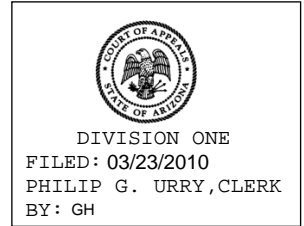


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 08-0973
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
JOSE LUIS NEVAREZ,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-176966-002 DT

The Honorable Robert A. Budoff, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Jose Luis Nevarez timely appeals from his convictions and sentences for burglary in the third degree and possession of burglary tools. After searching the record on appeal and finding no arguable question of law that was not frivolous,

Nevarez's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Nevarez to file a supplemental brief *in propria persona*, but Nevarez chose not to do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Nevarez's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Around 8:00 a.m. on December 1, 2007, two employees of a truck leasing company discovered an unfamiliar white Chevy pickup parked in front of a "boiler room" on the company's property, a location where "no one is supposed to be."

¶3 As the employees approached the boiler room, they heard the sound of a "grinder." The gate to the boiler room, which had previously been "permanently" welded shut, had been opened, and inside the employees discovered a woman and Nevarez. Nevarez had been "chopping stuff up" behind the boiler.

¶4 Located near the boiler the employees found a tree trimmer equipped with a blade designed to cut metal, a grinder, and other equipment that did not belong to the company. A blue

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Nevarez. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

extension cord running from the inside of the boiler room was plugged into a 120 volt AC power inverter hooked up to the Chevy's battery. The bed of the Chevy contained components that had been removed from the boiler, including a "large meter."

¶15 After an officer read him his *Miranda* rights, Nevarez explained "he was doing it to help Angela [the woman with him] get money [for a place to stay]," and they had intended to sell the materials to a scrap yard. Nevarez also told the officer he and Angela had come up with the idea to burglarize the building.

¶16 After a two-day trial, the jury found Nevarez guilty of burglary in the third degree, a class four felony, and possession of burglary tools, a class six felony. See Ariz. Rev. Stat. ("A.R.S.") §§ 13-1505, -1506 (Supp. 2009).² During the aggravation phase of the trial, the jury found two aggravators: the offense was committed for pecuniary gain, and the offense involved the presence of an accomplice.

¶17 At the conclusion of a trial before the court on prior convictions, the superior court found Nevarez had been convicted of two prior felonies for sentence enhancement purposes under A.R.S. § 13-604(C) (Supp. 2007) (this section is now A.R.S. § 13-703(C), (J) (Supp. 2009)). The superior court also found

²Although certain statutes cited in this decision were amended after the date of Nevarez's offenses, the revisions are immaterial. Thus, we cite to the current versions of these statutes.

the mitigating factors outweighed the aggravating factors and sentenced Nevarez to the "minimum term" on each count, with each count to run concurrently to the other. The superior court gave Nevarez 36 days presentence incarceration credit.

¶18 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001) and -4033(A)(1) (Supp. 2009).

DISCUSSION

¶19 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Nevarez was represented by counsel at all stages of the proceedings and was personally present at all critical stages. The evidence supports the jury's verdicts. Further, the record contains no support for Nevarez's assertion, through counsel's *Anders* brief, that the State's witnesses committed perjury or testified falsely. The jury was properly comprised of eight members. The court properly instructed the jury on the elements of the crime, the State's burden of proof, and the necessity of a unanimous verdict. The court gave Nevarez the opportunity to speak at sentencing. Nevarez's sentences were within the range of acceptable sentences and the superior court imposed the minimum terms. See A.R.S. § 13-604(C).

CONCLUSION

¶10 For the foregoing reasons, we decline to order briefing and affirm Nevarez's convictions and sentences.

¶11 After the filing of this decision, defense counsel's obligations pertaining to Nevarez's representation in this appeal have ended. Defense counsel need do no more than inform Nevarez of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶12 Nevarez has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Nevarez 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge