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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 08-1016
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SYLVIA DARLENE DELACRUZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-012383-001 DT

The Honorable Raymond P. Lee, 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 Cory Engle, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Sylvia Darlene Delacruz ("Defendant") appeals from the superior court's judgment of guilt and its imposition of supervised probation for taking the identity of another person, a class four felony pursuant to A.R.S. § 13-2008(A) and (F).

¶2 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Defendant's appellate counsel has searched the record on appeal and finds no arguable question of law that is not frivolous. See *Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Defendant was given the opportunity to file a supplemental brief *in propria persona*, but did not do so. Counsel now asks this court to independently review the record for fundamental error. We have done so, and find no fundamental error. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶3 In December 2006, the State filed a complaint charging Defendant with taking the identity of another person in violation of A.R.S. § 13-2008(A) (Supp. 2009).² In April 2008, Defendant was indicted for the offense set forth in the

¹ "We view the evidence in the light most favorable to sustaining the verdict[] and resolve all inferences against [Defendant]." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997) (citation omitted).

² We cite to the current versions of statutes when no changes material to our decision have since occurred.

complaint. She was arraigned and entered a not guilty plea. She rejected the State's plea offer and the case proceeded to a jury trial.

¶4 At trial, the State presented evidence that on February 28, 2006, a police officer initiated a traffic stop of Defendant after he observed her driving twenty miles per hour in a school zone with a posted speed limit of fifteen miles per hour. In violation of state law, Defendant was unable to produce a driver's license; she also was unable to produce an alternative form of identification. She verbally provided the officer with a name, date of birth, and social security number belonging to the victim, Defendant's sister. The officer used the information that Defendant provided to write a citation charging her with civil and criminal traffic violations. The officer also photographed Defendant and, in a space provided on the citation, took a fingerprint of Defendant's right index finger. Defendant signed the citation, agreeing to appear at the municipal court on March 10, 2006. The signature that Defendant provided did not appear to be a legible signature of her true name.

¶5 Sometime in March 2006, the victim received a letter from the municipal court advising her that she had failed to appear. After communicating with the municipal court and learning of the traffic citation, the victim met with a

detective to report that she was not the person who had been stopped. She informed the detective that she recognized the vehicle and phone number described on the citation as belonging to Defendant. The victim was fingerprinted and her fingerprints were compared with the fingerprint obtained during the stop. The victim's fingerprints were not a match. Defendant's fingerprints, however, were a match.³

¶6 Upon learning the results of the fingerprint comparisons, the detective called the phone number provided on the citation and a person who identified herself as Defendant answered. After an initial denial, the person admitted that she had received the citation and confirmed details of her encounter with the officer. She explained that she had given the officer the victim's identification information because she had young children in her vehicle when she was stopped and she did not want to go to jail.

¶7 At the conclusion of the State's presentation of evidence, Defendant moved for a judgment of acquittal pursuant to Ariz. R. Crim. P. 20. The motion was denied and the defense rested. After hearing closing arguments and considering the evidence, the jury found Defendant guilty of the charged offense. The court entered judgment on the jury's verdict,

³ Defendant's fingerprints were available for comparison because they had been obtained in connection with an unrelated matter.

suspended the imposition of sentence, and placed Defendant on supervised probation for two years. As a condition of her probation, Defendant was required to serve ten days in jail.

¶8 Defendant timely appeals. We have jurisdiction under Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033(A)(1) (Supp. 2009).

DISCUSSION

¶9 The record reveals no fundamental error. Defendant was present and represented by counsel at all critical stages. The record of voir dire does not demonstrate the empanelment of any biased jurors, and the jury was properly comprised of eight jurors and one alternate. See A.R.S. § 21-102(B) (2002).

¶10 In the second day of trial, one of the prosecutors informed the court and opposing counsel that he had inadvertently come into contact with one of the jurors during the lunch break. The prosecutor explained that he had conversed with a fellow attorney in an elevator without realizing that the juror also was in the elevator, and he was not sure whether the juror overheard the conversation. According to the prosecutor, the other attorney had asked him what he was doing, and he responded that he was in trial. When asked what type of case the trial involved, he responded that it was "ID theft, simple case."

¶11 The court questioned the juror and learned that she had overheard the prosecutor being asked what type of case he was working on and had heard him respond that it was an identity theft case. The juror stated that she had not heard anything else, and that what she had heard would not affect her view of the case or her impartiality. Without objection by Defendant, the court did not declare mistrial or excuse the juror, but instead allowed the juror to remain on the jury⁴ and instructed her not to discuss the incident with other jurors. We discern no error, much less fundamental error, in the court's actions. See *State v. Jones*, 185 Ariz. 471, 484, 917 P.2d 200, 213 (1996) (holding that although jurors and witnesses should avoid contact during trial, improper contact will not provide grounds for a mistrial in the absence of prejudice, and the decision whether to grant a mistrial is within the trial court's discretion).

¶12 The evidence that the State presented at trial was properly admissible and was sufficient to allow the jury to find Defendant guilty of the charged offense. After the jury returned its verdict, the court received and considered a presentence report. At the sentencing hearing, Defendant was given the opportunity to speak, and the court stated on the record the evidence and materials it considered. The court then imposed a legal punishment for the offense.

⁴ The juror was not later chosen as the alternate juror.

CONCLUSION

¶13 We have reviewed the record for fundamental error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm Defendant'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, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and her future options. *Id.* Defendant has thirty 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, Defendant has thirty days from the date of this decision in which to file a motion for reconsideration.

/S/

PETER B. SWANN, Presiding Judge

CONCURRING:

/S/

LAWRENCE F. WINTHROP, Judge

/S/

MICHAEL J. BROWN, Judge