

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



DIVISION ONE
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BY: DN

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

STATE OF ARIZONA,) 1 CA-CR 08-1108
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MICHAEL RYAN JACKSON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-006701-001 DT

The Honorable John R. Hannah, Jr., Judge

AFFIRMED

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

Maricopa County Public Defender Phoenix
by Louise Stark, Deputy Public Defender
Attorneys for Appellant

I R V I N 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 Michael Ryan Jackson ("Jackson") asks this court to search the record for fundamental error. Jackson was given an opportunity to file a supplemental brief in propria persona, he has not done so. After reviewing the record, we affirm Jackson's conviction and sentence for misconduct involving weapons.

FACTS AND PROCEDURAL HISTORY

¶2 The State charged Jackson with misconduct involving weapons, a class four felony. At the close of the evidence, the trial court properly instructed the jury on the elements of the offense. Jackson was convicted as charged.

¶3 The trial court conducted the sentencing hearing in compliance with Jackson's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. The trial court sentenced Jackson to 4.5 years imprisonment in Arizona Department of Corrections with credit for 144 days presentence incarceration.

DISCUSSION

¶4 We exercise jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes section 12-120.21(A)(1) (2003). We review Jackson's conviction and sentence for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991).

¶15 We first address the issues raised by Jackson through his counsel. Jackson raises two issues relating to the grand jury proceeding. At the onset we note that we will not consider Jackson's claims concerning the grand jury on appeal after his conviction. *State v. Agnew*, 132 Ariz. 567, 573, 647 P.2d 1165, 1171 (App. 1982). Jackson filed a special action seeking relief from the trial court's denial of his motion for a new finding of probable cause. Relief was denied. Grand jury issues are now moot because the trial jury found Jackson guilty beyond a reasonable doubt.

¶16 Jackson also argues that the trial court erred in not allowing his statements that he was unaware that he was a prohibited possessor while allowing statements demonstrating that he had such knowledge. We review the trial court's ruling on the relevance and admissibility of evidence for an abuse of discretion. See *State v. Aguilar*, 209 Ariz. 40, 49, ¶ 29, 97 P.3d 865, 874 (2004); *State v. Jeffrey*, 203 Ariz. 111, 114, ¶ 13, 50 P.3d 861, 864 (App. 2002). At trial, Jackson's counsel argued that it was "highly relevant" whether or not Jackson knew that he should have had a gun or not. Nevertheless, the trial court granted the State's motion to preclude Jackson's statements that he was not aware that he was a prohibited possessor. We find no error. To support a conviction for misconduct involving weapons, the statute merely requires that a

defendant knowingly possess. *State v. Tyler*, 149 Ariz. 312, 316, 718 P.2d 214, 218 (App. 1986). The statute does not require that Jackson know that he was a prohibited possessor.

¶7 Further, Jackson argues that Officer R.D.'s testimony, which included a description of his unit-assignments, violated the court's order and constituted prosecutorial misconduct. Prosecutorial misconduct occurs where the prosecutor's statements call to the jury's attention matters it should not consider in reaching its decision, where the prosecutor places the prestige of the government behind its evidence, or where the prosecutor suggests that information not presented to the jury supports the evidence. *State v. Newell*, 212 Ariz. 389, 402, ¶¶ 60, 62, 132 P.3d 833, 846 (2006) (citations omitted). To prove prosecutorial misconduct, an "appellant must show: (1) the state's actions were improper; and (2) 'a reasonable likelihood exists that the misconduct could have affected the jury's verdict, thereby denying defendant a fair trial.'" *State v. Montano*, 204 Ariz. 413, 427, ¶ 70, 65 P.3d 61, 75 (2003) (citation omitted). We will reverse based on prosecutorial misconduct if the conduct is "so pronounced and persistent that it permeates the entire atmosphere of the trial." *State v. Rosas-Hernandez*, 202 Ariz. 212, 218-19, ¶ 23, 42 P.3d 1177, 1183-84 (App. 2002) (citation omitted).

¶8 Here, the State engaged in none of the above behavior. In response to being asked to explain his current duties with the police department, Officer R.D. responded that he is "assigned to the violent crimes bureau, robberies unit. We investigate kidnappings, robberies, home invasions, carjackings, stuff like that." Jackson's trial counsel never objected and did not ask for a bench conference out of the jury's presence to discuss the comments in light of the trial court's prior ruling. On appeal, Jackson argues for the first time that the State committed prosecutorial misconduct. Therefore, Jackson's argument is without merit.

¶9 Counsel for Jackson has advised this court that after a diligent search of the entire record, she has found no arguable question of law. The court has 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. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Jackson was represented by counsel at all stages of the proceedings and the sentence imposed was within the statutory limits. We decline to order briefing and we affirm Jackson's conviction and sentence.

¶10 Upon the filing of this decision, defense counsel shall inform Jackson of the status of his appeal and of his

future options. Defense 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). Jackson shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the court's own motion, we extend the time for Jackson to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶11 Jackson's sentence and conviction is affirmed.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

JON W. THOMPSON, Judge