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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,) 1 CA-CR 09-0143
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
WARREN HOCKETT, SR.,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2007-133651-001 DT

The Honorable Steven K. Holding, Judge Pro Tempore

AFFIRMED AS CORRECTED

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

Bruce Peterson, Maricopa Office of the Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorneys for Appellant

N O R R I S, Judge

¶1 Warren Hockett, Sr. ("Hockett") appeals from his convictions and sentences for six counts of burglary in the third degree. After searching the record on appeal and finding no arguable question of law that was not frivolous, Hockett'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 Hockett to file a supplemental brief *in propria persona*, but Hockett chose not to do so. After reviewing the entire record, we find no fundamental error and therefore affirm Hockett's convictions and sentences. We do, however, correct the superior court's sentencing minute entry to accurately reflect Hockett's indicted offenses as amended during trial.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 Sometime between March 3, 2007, and March 5, 2007, a person or persons broke into two recreational vehicles ("RVs") stored at a north Scottsdale self-storage lot ("storage lot"). The perpetrator(s) broke windows to gain access to the RVs and stole items from within. Police collected blood evidence from both RVs which an expert later determined to be Hockett's.

¶13 On March 27, 2007, a person or persons "smashed open" the north gate of the storage lot. The perpetrator(s) broke windows to gain access to two other RVs, ransacked the interiors, and stole items from one of the RVs. Police

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

collected blood evidence from both of these RVs which an expert later determined to be Hockett's.

¶14 After a four-day trial, the jury found Hockett guilty of three counts of burglary in the third degree on or between March 3, 2007, and March 5, 2007 (counts one, two and three), and three counts of burglary in the third degree on or between March 25, 2007, and March 27, 2007 (counts four, five and six), all class four felonies pursuant to Arizona Revised Statutes ("A.R.S.") section 13-1506 (Supp. 2008).²

¶15 At the conclusion of a trial before the court on prior convictions, the superior court found Hockett had been convicted of two prior felonies in Arizona in 2002 and 2004, respectively; it also found Hockett had been convicted in Michigan in 1990 ("MI prior") of armed robbery and felon in possession of a firearm. The superior court used three prior convictions for sentence enhancing purposes under A.R.S. § 13-604(C) (Supp. 2008) (effective January 1, 2009, this section is A.R.S. § 13-703(C), (J)).³ The superior court sentenced Hockett to ten years

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

³At Hockett's trial on prior convictions, the parties disputed whether the MI prior could be used for sentence enhancement purposes under A.R.S. § 13-604(N) (effective January 1, 2009, this section is A.R.S. §§ 13-703(M), -704(K) and

for each count, with counts one, two and three to run concurrently to each other; counts four, five and six to run concurrently to each other; and counts four, five and six to run consecutive to counts one, two and three. The superior court gave Hockett 628 days presentence incarceration credit for counts one, two and three.

¶16 Hockett timely appeals his convictions and sentences. We have jurisdiction 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. 2008).

DISCUSSION

¶17 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Hockett was represented by counsel at all stages of the proceedings and was personally present at all critical stages. The jury was properly comprised of 12 members. The court

-707(D)). The superior court concluded the MI prior could be used.

We need not determine whether the superior court arrived at this conclusion correctly because only two priors were required for purposes of enhanced sentencing under A.R.S. § 13-604(C) and the record reflects sufficient evidence to support its conclusion Hockett's two Arizona prior convictions could be used for sentence enhancement purposes. See *State v. Smith*, 219 Ariz. 132, 194 P.3d 399 (2008) (we review whether a foreign conviction constitutes a felony in Arizona de novo as an issue of law; before a court may use foreign conviction for sentencing enhancement purposes, it must first conclude the foreign conviction includes every element that would be required to prove an enumerated Arizona offense; this examination may be reviewed for fundamental error despite lack of objection).

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 Hockett the opportunity to speak at sentencing. Hockett's sentences were within the range of acceptable sentences and the superior court imposed the presumptive terms. See A.R.S. § 13-604(C).

¶18 An error in the sentencing minute entry requires modification. *State v. Sands*, 145 Ariz. 269, 278, 700 P.2d 1369, 1378 (App. 1985). We have authority to correct a discrepancy between the superior court's oral pronouncement of a sentence and its sentencing minute entry when the discrepancy can be resolved by reference to the record. *State v. Contreras*, 180 Ariz. 450, 453 n.2, 885 P.2d 138, 141 n.2 (App. 1994). Because we can resolve discrepancies here by reference to the record, we do so.

¶19 Under counts one, two and three, a grand jury originally indicted Hockett for burglary in the third degree on or between March 3, 2007, and March 4, 2007. Near the conclusion of its case-in-chief, the State moved to amend counts one, two and three to be on or between March 3, 2007, and March 5, 2007, based on evidence developed during trial. The superior court granted the State's motion, but its February 12, 2009 sentencing minute entry does not reflect the amended indictment. Accordingly, we correct the sentencing minute entry to read "On

or between 3/3/2007 and 3/5/2007" under counts one, two and three.

CONCLUSION

¶10 For the foregoing reasons, we decline to order briefing and affirm Hockett's convictions and sentences. We correct the sentencing minute entry as directed above.

¶11 After the filing of this decision, defense counsel's obligations pertaining to Hockett's representation in this appeal have ended. Defense counsel need do no more than inform Hockett 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 Hockett 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 Hockett 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/

SHELDON H. WEISBERG, Judge

/s/

MARGARET H. DOWNIE, Judge