DIVISION ONE
FILED: 01/19/2010
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 09-0294
	)	
Appellee,	)	DEPARTMENT B
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
ADONIS LEWIS,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-165676-001 DT

The Honorable Michael D. Jones, Judge

AFFIRMED

Terry Goddard, Arizona 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 Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

Adonis Lewis, — Winslow
Appellant *In Propria Persona*

D O W N I E, Judge

¶1 Adonis Lewis ("defendant") timely appeals his conviction for robbery under Arizona Revised Statutes ("A.R.S.") section 13-1902 (2001). Pursuant to *Anders v. California,* 386 U.S. 738 (1967), and *State v. Leon,* 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record and found no arguable question of law. Counsel now requests review of the record for fundamental error. *See State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993).

¶2 Defendant was given an opportunity to file a supplemental brief *in propria persona*, and he has done so. He alleges: (1) ineffective assistance of counsel; (2) inappropriate sanitizing of a witness's prior convictions; and (3) use of an improper definition of "force." On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison,* 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied,* 459 U.S. 882 (1982).

FACTS AND PROCEDURAL BACKGROUND

¶3 Shortly before midnight, V.S., a homeless man, was sitting in the parking lot of a dry cleaning business when defendant, an acquaintance, approached. The two men sat together to talk and have a beer. A woman's purse that V.S. found a few weeks earlier and used to carry personal belongings sat next to him. Defendant reached down and took the purse. V.S. also grabbed it and said, "Give me my bag." Each man

maintained his grip on the purse and wrestled for possession throughout the parking lot and onto the sidewalk.

¶4 An employee and his companion conducting night deliveries arrived as V.S. and defendant struggled for the purse. The employee tried to "break up the situation," but neither man relinquished his hold on the purse. The incident continued to escalate, and the employee warned defendant he was trespassing, and he would call police unless he let go of the purse. Defendant told the employee to "leave him alone" and continued struggling for the purse. The strap on the purse broke, and defendant ran away with it. The employee followed defendant, who picked up a piece of concrete to throw at V.S.; the employee put his hand on his sidearm and told defendant to drop it. Defendant dropped the piece of concrete and ran away. The police arrived. While V.S. and the witnesses were being questioned, defendant walked back up the street. The witnesses identified defendant, and he was taken into custody.

¶5 Defendant was charged with robbery, though the jury was also instructed on the lesser-included offense of theft. *See State v. McNair,* 141 Ariz. 475, 482, 687 P.2d 1230, 1237 (1984) ("Theft is a lesser-included offense of robbery."). At the conclusion of the State's case, defendant moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure. The motion was denied. Defendant did not

testify. The jury deliberated and found him guilty of robbery. It found the State did not prove pecuniary gain as an aggravating factor.

¶6 During sentencing, defendant stipulated to six prior felony convictions, two of which were used as historical priors to enhance his sentence, while the others served as aggravating factors in determining the term of incarceration. Defendant was sentenced to the presumptive prison term of ten years, with 185 days of pre-sentence incarceration credit.

DISCUSSION

¶7 We have read and considered the briefs submitted by defendant and his counsel and have reviewed the entire record. *See State v. Leon,* 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

1. Ineffective Assistance of Counsel

¶8 Defendant asserts a claim of ineffective assistance of counsel. "Any such claims improvidently raised in a direct

appeal . . . will not be addressed by appellate courts regardless of their merit." *State v. Spreitz,* 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002) ("[I]neffective assistance of counsel claims are to be brought in Rule 32 proceedings.").

2. Witness's Prior Convictions

¶9 Defendant asserts the trial court abused its discretion in sanitizing V.S.'s two prior theft convictions, which affected his right to confront an adverse witness.[1] Specifically, defendant takes umbrage at V.S.'s trial testimony that he does not "lie or steal" and states the verdict may have been different if the jury had known V.S. had prior theft convictions.[2]

¶10 We review rulings regarding the admissibility of prior criminal convictions for an abuse of discretion. *State v. Beasley,* 205 Ariz. 334, 338, ¶ 19, 70 P.3d 463, 467 (App. 2003) (citation omitted). Generally, a trial court abuses its

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[1] Defendant further asserts the decision to sanitize V.S.'s criminal history was not "articulated on the record and no legal support for such a finding was discussed." The record, however, demonstrates otherwise, reflecting that the court and counsel discussed options under Arizona Rule of Evidence 609 for dealing with V.S.'s convictions. The court articulated its belief that the convictions were "relevant and appropriate" and that V.S. could be impeached with them, though the name and classification of the charges could not be mentioned.

[2] Defendant also states V.S. had prior convictions "for giving incorrect, or untruthful, versions of these events." Nothing in the record supports this assertion. Moreover, V.S.'s description of the events was supported by two other trial witnesses.

discretion where an error of law is committed in reaching its decision or the record fails to provide substantial support for the court's decision. *State v. Cowles,* 207 Ariz. 8, 9, ¶ 3, 82 P.3d 369, 370 (App. 2004) (citation omitted). Rule 609(a) allows a witness's credibility to be impeached by a prior criminal conviction "if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect, and if the crime (1) was punishable by . . . imprisonment in excess of one year . . . or (2) involved dishonesty or false statement, regardless of the punishment."[3]

¶11 The trial court properly found V.S.'s criminal history relevant for impeachment. *See Beasley,* 205 Ariz. at 338, ¶ 19, 70 P.3d at 467 ("[A]ny felony conviction is thought to bear upon the credibility of the witness."). The court allowed V.S.'s credibility to be impeached using the convictions, prohibiting only the name and classification of the charges. *See id.* at 339, ¶ 22, 70 P.3d at 468 ("[I]n appropriate cases, the trial court may reduce the risk of prejudice by admitting the fact of a prior conviction without disclosing the nature of the crime.") (citations omitted); *State v. Malloy,* 131 Ariz. 125, 127, 639 P.2d 315, 317 (1981) ("Criminal acts such as theft and robbery commonly carry a connotation of dishonesty. Rule 609 is,

[3] Defendant claims the trial court applied Rules 403 and 404(b), but should have applied Rule 609(a). The record demonstrates the court applied Rule 609.

however, concerned with those crimes which establish the trait of untruthfulness."). Counsel for defendant agreed it was appropriate to sanitize V.S.'s convictions in this manner. The record contains substantial support for the trial court's decision.

3. Definition of Force

¶12 Defendant asserts that, in denying his Rule 20 motion, the trial court inappropriately determined the "tugging and pulling" of the purse met the force element of robbery. According to defendant, force requires some threat, intimidation or violence.

¶13 A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citation omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶14 To commit robbery, a person takes another's property using force intended to coerce surrender of the property or

prevent resistance to its taking. A.R.S. § 13-1902. "'Force' means *any* physical act directed against a person as a means of gaining control of property." A.R.S. § 13-1901 (2001) (emphasis added).

¶15 The State presented substantial evidence of guilt. V.S. had carried his personal belongings in the purse for a few weeks, evidencing that it belonged to him. V.S. did not voluntarily give up the purse and actively tried to prevent defendant from taking it. Defendant was able to gain control of the purse only when the strap broke. V.S. and two other witnesses identified defendant as the person who took the purse.

¶16 On cross-examination, V.S. testified defendant did not threaten, push, or hit him. However, V.S. also testified he and defendant wrestled and jockeyed over possession of the purse for several minutes, over a physical space of about 100 feet before defendant was able to gain control of it. These actions are sufficient under Arizona law, which defines force as *any* physical act used to gain control of property. A.R.S. § 13-1901(1). *See also State v. Garza,* 164 Ariz. 107, 111, 701 P.2d 633, 637 (1990) (robbery requires a physical act of force "sufficient to overpower the party robbed") (citing *State v. Bishop,* 144 Ariz. 521, 524, 698 P.2d 1240, 1243 (1985) ("'Force' sufficient to constitute robbery . . . must be of such a nature

as to show that it was intended to overpower the party robbed.")).

CONCLUSION

¶17 We affirm defendant's conviction and sentence. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than inform defendant of the status 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
PATRICIA K. NORRIS,
Presiding Judge

/s/
SHELDON H. WEISBERG, Judge