

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 09-0295  
)  
Appellee, ) DEPARTMENT B  
)  
v. ) **MEMORANDUM DECISION**  
)  
CARLOS ALFREDO COCOM-TAX, )  
) (Not for Publication -  
Appellant. ) Rule 111, Rules of the  
) Arizona Supreme Court)  
)  
)  
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)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2007-008770-002 DT

The Honorable Joseph C. Welty, Judge

**AFFIRMED**

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

Sharmila Roy Laveen  
Attorney for Appellant

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**B A R K E R**, Judge

¶1 Carlos Alfredo Cocom-Tax ("Cocom-Tax") appeals from  
his convictions and sentences for three counts of kidnapping,

class two dangerous felonies, and one count of human smuggling, a class four felony. Cocom-Tax was sentenced on April 23, 2009, and timely filed a notice of appeal on April 24, 2009. Cocom-Tax'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), advising this court that after searching the entire record on appeal, she finds no arguable ground for reversal. Cocom-Tax was granted leave to file a supplemental brief *in propria persona* on or before January 19, 2010, and did not do so.

¶2 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2001), and 13-4033(A) (2001). We are required to search the record for reversible error. Finding no such error, we affirm.

#### ***Facts and Procedural Background***<sup>1</sup>

¶3 R.O. entered the United States on September 30, 2007, headed for Yuma, Arizona to be with his wife. He paid a coyote \$800 to transport him into the United States illegally. Coyotes smuggle human-beings from one country to another. After he was transported to Phoenix by an armed driver, he and

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<sup>1</sup> We review the facts in the light most favorable to upholding the jury's verdict and resolve all inferences against Cocom-Tax. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

approximately seven others were taken to a house and ordered to hand over their belts, shoes, socks, and wallets. These undocumented immigrants in the control of smugglers ("pollos") were in that house for nineteen days before the police rescued them. The coyotes told R.O. that his family had to pay another \$2800 for him to be released, and if he did not pay he would be beaten.

¶4 When R.O. was pulled out to call his family he saw Cocom-Tax with the other coyotes. Cocom-Tax was wearing Huaraches, a type of Mexican sandal. Once when two coyotes brought R.O. out to make a call, Cocom-Tax slapped him on the head and told him to sit down. Cocom-Tax never stayed in the room with the other prisoners, but was in the hallway guarding the door about three times. R.O. saw Cocom-Tax have conversations with the other coyotes and no one ever spoke harshly to him. He also saw him with a beer in his hands once.

¶5 Other groups of pollos arrived and they were all kept in the room with no furniture, boarded windows, and a door locked from the outside. The prisoners used a five-gallon bucket for the restroom because they were not allowed to go outside the room. The coyotes discovered that some prisoners were attempting to lift up the plywood that was covering the window. The coyotes suspected R.O. and threw him into the

bathtub with one of them standing on top of him and another pointing a gun at his head. They put a plastic bag on his head, then ripped it off and put his head in a toilet bowl that had urine in it to make him talk. The coyotes told R.O. that if anything like that happened again they would kill him.

¶16 When the police arrived at the house the coyotes took off their shoes and tried to blend in with the pollos. R.O. pointed Cocom-Tax out to the police as a coyote because he was never locked up with the other prisoners, he ate and spoke with the other coyotes, he was able to walk around, he acted as a guard, and he wore shoes.

¶17 G.F. was in a later group of people brought to the house. Cocom-Tax searched him and took his wallet, belt, and shoes. G.F. was held in the house for nine days before being rescued by police. The coyotes told G.F. they would "make [him] disappear" when he could not come up with enough money. G.F. saw Cocom-Tax walking and talking normally and peacefully in the hallway with other coyotes. He never saw Cocom-Tax stay in a room with pollos, and he always saw Cocom-tax wearing the Mexican sandals.

¶18 R.S. was also locked in the house and had his belongings taken. The coyotes became suspicious of him; five of them beat him up, pointed guns at him, and threatened to kill

him if he did not give them the money. R.S. saw Cocom-Tax making phone calls for prisoners, guarding people, and yelling at people who could not get the money. Cocom-Tax never stayed with the pollos and he was clean and well dressed. When the police came, R.S. testified that he saw Cocom-Tax change his clothes and tell other pollos to tell the police that he was one of them.

¶9 On October 19, 2007, police surrounded the house and broke in after they heard someone scream. Detective Rangel and other detectives cleared the first level of the house and gave a command in Spanish to "step out." Fifty-four people came down the stairs with their hands in the air. The detectives found several bags of clothing, wallets, and Mexican IDs. All the bedroom windows were boarded up except one, and the doors would lock only from the outside.

¶10 Detective Rangel testified that it is very uncommon for coyotes to place people in positions of power they do not know because of the constant fear that those people will steal pollos. He acknowledged that on occasion pollos are forced to work if they cannot pay off their ransom, but they are never entrusted with sandals on their feet for fear they would run. Detective Rangel also testified that it was unlikely that Cocom-Tax was trying to work off a ransom because he knew where

multiple drop houses were located, and if he had escaped he could have put the whole operation at risk.

¶11 On October 29, 2007, Cocom-Tax was charged with six counts of kidnapping, all class two dangerous felonies, and one count of human smuggling, a class four felony. On December 1, 2008, the court severed Cocom-Tax's case from that of his co-defendants. Cocom-Tax rejected the State's plea offer, and his case proceeded to trial. On the first and second day of trial, the State requested that the first three kidnapping charges be dismissed. That request was granted by the court and the jury considered only counts four through seven. Cocom-Tax was present and represented by counsel at all times during trial.

¶12 At trial, the State presented testimony by R.O., G.F., R.S., and Detective Rangel. Each victim placed Cocom-Tax at the house acting as a guard over the pollos and dressed like a coyote. R.O. testified that Cocom-Tax had slapped him on the head and told him to sit down after he was brought out for a phone call. G.F. testified that Cocom-Tax searched him and took his wallet, belt, and shoes. R.S. testified that he saw Cocom-Tax change his clothes and tell other pollos to tell the police that he was one of them.

¶13 At the conclusion of the State's case, Cocom-Tax moved for a judgment of acquittal on all counts, pursuant to Arizona

Rules of Criminal Procedures 20. The court denied his motion finding sufficient and substantial evidence was presented. The defense presented its case and Cocom-Tax testified at trial. He testified that he was a pollo trying to enter the United States and that the coyotes made him work to pay off the \$500 they were demanding. He further testified that the coyotes threatened that if he did not pay "they would return [him] to the desert without any legs, or in a black bag." He consented to do what they asked because he was afraid his family would suffer if he was killed. His shoes were returned to him, but he was always watched by a coyote. At defense counsel's request, the court gave a jury instruction on the defense of duress.

¶14 At the conclusion of trial, a twelve-person jury convicted Cocom-Tax of three counts of kidnapping, all found to be dangerous offenses, and one count of human smuggling. The jury also found the State had proven the presence of an accomplice as an aggravating factor on the kidnapping charges. At sentencing, the trial court found two aggravating circumstances: pecuniary gain and the presence of numerous accomplices. The trial court provided Cocom-Tax an opportunity to speak and then ordered a presumptive sentence of 10.5 years each on counts four, five and six, and 2.5 years on count seven,

all to run concurrently, with 551 days of presentence incarceration credit on all counts.

***Disposition***

¶15 We have reviewed the record and have found no meritorious grounds for reversal of Cocom-Tax's convictions or for modification of the sentences imposed. See *Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Cocom-Tax was present at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. Accordingly, we affirm.



¶16 After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform Cocom-Tax of the status of the appeal and Cocom-Tax's 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). Cocom-Tax has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

/s/

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DANIEL A. BARKER, Judge

CONCURRING:

/s/

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PATRICIA K. NORRIS, Presiding Judge

/s/

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PETER B. SWANN, Judge