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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 09-0392
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
MARTIN MATA,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-007446-001 DT

The Honorable Sam J. Myers, Judge

AFFIRMED

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

Thomas A. Gorman, Attorney at Law Sedona
Attorney for Appellant

Martin Mata, Appellant Buckeye

N O R R I S, Judge

¶1 Martin Mata timely appeals from his convictions and sentences for three counts of aggravated assault, two counts of kidnapping, and single counts of misconduct involving weapons,

burglary in the first degree, armed robbery, and theft of means of transportation. After searching the record on appeal and finding no arguable question of law that was not frivolous, Mata'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 Mata to file a supplemental brief *in propria persona*, and Mata chose to do so. We reject the arguments raised in Mata's supplemental brief and, after reviewing the entire record, find no fundamental error. Therefore, we affirm Mata's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 On June 2, 2007, an Ahwatukee man confronted Mata thinking he was attempting to steal his neighbor's truck. Mata, a prohibited possessor, beat the man with a gun and fled. Hours later, Mata entered a couple's nearby home, demanded items at gunpoint, forced them to drive him to South Phoenix, and stole their truck. After an eight-day trial, a jury found Mata guilty of nine felony offenses, *see supra* ¶ 1, and found all to be dangerous offenses except the theft of means of transportation

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

charge. Before sentencing, the superior court held a trial on Mata's historical priors and found two prior felony convictions for sentencing enhancement and additional felonies to justify an aggravated sentence. On May 21, 2009, the superior court imposed the maximum sentence on each count, finding the aggravating circumstances outweighed the mitigating circumstances.² See A.R.S. § 13-604(C), (D) (Supp. 2006) (this section is now A.R.S. § 13-703(C), (J) (2010)). The sentences totaled 172 years and the court awarded Mata 272 days of presentence incarceration credit.

DISCUSSION

¶13 In his supplemental brief, Mata first argues we should grant him a new trial because of the ineffective assistance of his trial counsel. Mata's ineffective assistance of counsel arguments are not properly before us. *State ex rel. Thomas v. Rayes*, 214 Ariz. 411, 415, ¶ 20, 153 P.3d 1040, 1044 (2007) ("defendant may bring ineffective assistance of counsel claims only in a Rule 32 post-conviction proceeding -- not before trial, at trial, or on direct review").

¶14 Mata also argues victim witnesses lied under oath. Credibility determinations are for the fact finder, however, not

²The aggravating factors the court identified were Mata's criminal history, the jury's findings of dangerousness, and the harm to the victims. See Ariz. Rev. Stat. ("A.R.S.") § 13-702(C)(2), (9), (11) (Supp. 2006) (these subsections are now A.R.S. § 13-701(D)(2), (9), (11) (2010)).

this court, and we defer to the jury's determinations of witness credibility. *State v. Dickens*, 187 Ariz. 1, 21, 926 P.2d 468, 488 (1996).

¶15 Finally, Mata contends the evidence was insufficient to sustain his convictions. Although Mata correctly notes one witness who knew Mata was unable to identify him in court, all three victims, a witness who had known Mata for two years, and two law enforcement officers identified him in court. Mata also argues "[a]ll the victims" described him as approximately ten years younger than he actually was, and he was never found "in possession of any gun or of the [items] the [victims] sa[id] the suspect took from them." Mata was not arrested until over two months after the incidents took place, however, and the trial testimony by itself constituted substantial evidence of Mata's guilt. See *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (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") (citation omitted).

¶16 In addition to reviewing those portions of the record necessary to address Mata's concerns, we have reviewed the entire record for reversible error and have found none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Mata received a fair

trial. He was represented by counsel at all stages of the proceedings and was personally present at all critical stages.

¶17 The jury was comprised of twelve members, the court properly instructed the jury on the elements of the crimes, Mata's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Mata was given an opportunity to speak at sentencing, and his sentences were within the range of acceptable sentences for his offenses.

CONCLUSION

¶18 We decline to order briefing and affirm Mata's convictions and sentences.

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

¶10 Mata 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 Mata 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/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge