

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



DIVISION ONE
FILED: 08-03-2010
PHILIP G. URRY, CLERK
BY: DN

STATE OF ARIZONA,)
) 1 CA-CR 09-0464
Appellee,)
) DEPARTMENT D
v.)
) MEMORANDUM DECISION
HOWARD BARON ROSENTHAL,)
) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR 2008-122444-001 DT

The Honorable F. Pendleton Gaines, III, Judge

AFFIRMED

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

James Haas, Maricopa County Public Defender
by Terry J. Adams, Deputy Public Defender
Attorneys for Appellant Phoenix

W E I S B E R G, Judge

¶1 Howard Baron Rosenthal ("Defendant") appeals from his convictions and sentences imposed after a jury trial. Defendant's counsel has filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 744 (1967), and *State v. Leon*, 104 Ariz. 297, 299,

451 P.2d 878, 880 (1969), advising this court that after a search of the entire record on appeal, counsel finds no arguable ground for reversal. This court granted Defendant an opportunity to file a supplemental brief, but none was filed. Counsel now requests that we search the record for fundamental error. *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Having done so and finding no reversible error, we affirm.

¶12 We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A)(2010).

FACTS AND PROCEDURAL HISTORY

¶13 We review the facts in the light most favorable to sustaining the verdict. *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). Defendant was indicted on two counts of forgery, class 4 felonies. The State alleged one historical prior felony conviction. The following evidence was presented at trial.

¶14 On April 10, 2008, Defendant entered an Auto Zone store to purchase certain items. Defendant gave an employee a one-hundred dollar bill to pay for the merchandise, received change, and left the store. Although the employee checked to see if the bill was counterfeit as required by store policy, it did not appear to him that it was.

¶15 Later that day, Defendant returned to the store, picked up other items and gave a second one-hundred dollar bill to another employee. When this employee examined the bill, it did not appear to be legitimate. He told Defendant he could not accept the bill because he believed it was a counterfeit bill. Defendant wanted the bill returned to him, but the employee told him he could not relinquish it. Defendant became insistent about getting the bill so he could leave the store, and Defendant and the employee argued.

A third employee, who overheard the verbal altercation, called the police.

¶16 Officer Coudret of the Phoenix Police Department arrived at Auto Zone as Defendant was leaving. Defendant seemed nervous and upset. It appeared to the officer that Defendant was trying to get away. Defendant attempted to grab his wallet. When the officer seized it, Defendant said, "No, no, no, don't look in my wallet." Officer Coudret removed three one-hundred dollar bills from Defendant's wallet. The officer obtained the two one-hundred dollar bills given to the Auto Zone employees and impounded all five bills.

¶17 Detective Geremia of the document crimes detail of the Phoenix Police Department with training and experience in forgeries and counterfeiting examined the five bills, three of which were found in Defendant's wallet and two of which were given to Auto Zone employees. He determined that all the bills were counterfeit.

He concluded that the bills were originally five-dollar bills that had been washed and reprinted as one-hundred dollar bills. Although Defendant did not testify, his defense was that he did not know the bills were counterfeit and that he did not have the requisite mental state necessary for commission of the the crime of forgery.

¶18 The jury found Defendant guilty as charged. At sentencing, Defendant admitted to a prior felony conviction for possession of drug paraphernalia. The court found at least two mitigating factors and imposed concurrent mitigated prison terms of 2.25 years on each count with 44 days of presentence incarceration credit. The court also ordered Defendant to pay \$100 in restitution to Auto Zone. Defendant filed a timely notice of appeal.

CONCLUSION

¶19 We have read and considered counsel's brief and have searched the entire 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, Defendant was represented by counsel at all stages of the proceedings, the sentences imposed were within the statutory limits, and sufficient evidence existed for the jury to find that the offenses were committed by Defendant.

¶10 After the filing of this decision, counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do no more than inform Defendant of the status of the appeal and of Defendant's future options, unless counsel's review reveals 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). On the court's own motion, Defendant has thirty days from the date of this decision to proceed, if he desires, with a motion for reconsideration or petition for review *in propria persona*.

¶11 Accordingly, we affirm Defendant's convictions and sentences.

/s/ _____
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/ _____
MICHAEL J. BROWN, Presiding Judge

/s/ _____
JON W. THOMPSON, Judge