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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,) No. 1 CA-CR 09-0465
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MICHAEL ROBERT BECKER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-164700-002 DT

The Honorable Lisa M. Roberts, Judge *Pro Tempore*

AFFIRMED

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

Bruce F. Peterson, Maricopa County Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorneys for Appellant

D O W N I E, Judge

¶1 Michael Robert Becker ("defendant") timely appeals his convictions for burglary, possession of burglary tools, and possession or use of dangerous drugs, in violation of Arizona

Revised Statutes ("A.R.S.") sections 13-1507 (2010), -1505 (2010), and -3407 (2010).¹ 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 advised that she has thoroughly searched the record and found no arguable question of law and requests that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given the opportunity to file a supplemental brief *in propria persona* but has not done so. On appeal, we view the evidence in the light most favorable to sustaining the convictions. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶2 On October 16, 2008, K.M. saw a man peering into the window of neighbor S.A.'s house. The man walked back to a car parked in front of another house, where a young woman was waiting. They drove down the street very slowly. K.M. called S.A. at work to tell her what she had seen. S.A. said she was not expecting anyone at her home and to call the police if they returned. K.M. went over to S.A.'s house and looked through a window. She saw the same car, which was now parked in S.A.'s backyard. K.M. called 9-1-1.

¹ We cite to the current version of statutes when no revisions material to this decision have occurred.

¶13 Defendant was inside S.A.'s house when police arrived. Through a window, Officer M.H. saw a woman running through the house and into the backyard. Officers entered the backyard from the alley and arrested her as she tried to scale a wall. Defendant exited the rear door of the house. Officer T.C. drew his weapon and ordered him to the ground. Before complying, defendant emptied his pockets of a pair of black gloves, a TV remote, and a large screwdriver.

¶14 After defendant's arrest, Officer M.H. searched him and found a baggie containing a crystalline, white-powdery substance. Officers administered *Miranda* warnings to defendant. Defendant told Officer M.H. his name and admitted he was committing a burglary. Defendant said the substance in the baggie was methamphetamine, which lab tests confirmed. Defendant described to Officer J.H. how he picked S.A.'s house after driving through the neighborhood with the female accomplice. He made sure nobody was at home, went around to the back of the house, and broke in through the rear door. He said he wore gloves to avoid leaving fingerprints. He stated he was "out of work and had a drug habit."

¶15 Defendant was indicted for burglary in the second degree, a class 3 felony; possession of burglary tools, a class 6 felony; and possession of methamphetamine, a dangerous drug, a class 4 felony. The State alleged five historical priors, as

well as aggravating circumstances. Defendant failed to appear for trial; the court found he was voluntarily absent and proceeded with a jury trial *in absentia*.

¶16 After the State rested, defense counsel moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20. The court denied the motion. The defense presented no witnesses. After closing arguments, an aggravation hearing was held before the jury. S.A. testified about property damage, loss of work, and emotional harm she and her family suffered as a result of the burglary.

¶17 The jury deliberated and returned a verdict of guilty on all counts. In addition, it found three aggravating factors, including the presence of an accomplice, commission of the offense for pecuniary gain, and emotional or financial harm to the victim. Defendant admitted two prior felony convictions for sentencing purposes. After considering defendant's substance abuse as a mitigating factor, the trial court imposed an aggravated prison term of eighteen years on count 1. Defendant received a concurrent, aggravated prison term of four years for count 2, and a presumptive term of eleven years for count 3.²

² Defendant also received a concurrent ten-year prison sentence in CR 2009-122234 for forgery. That offense is unrelated to this appeal.

DISCUSSION

¶8 We have read and considered the brief submitted by defense counsel and reviewed the entire record. *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.

¶9 The trial court properly denied defendant's Rule 20 motion. 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).

¶10 The State presented substantial evidence of guilt, including testimony by K.M., the victims, and police officers. The victims testified they did not know defendant or give him permission to be in their home. Officers testified that defendant confessed after receiving *Miranda* warnings. Based on

