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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 09-0491
)
) DEPARTMENT D
 Appellee,)
) **MEMORANDUM DECISION**
 v.)
) (Not for Publication -
 ROBERT MICHAEL BRATTON,) Rule 111, Rules of the
) Arizona Supreme Court)
 Appellant.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-048913-001 DT

The Honorable Maria del Mar Verdin, Judge
The Honorable Carolyn K. Passamonte, *Judge Pro Tempore*

CONVICTIONS AND SENTENCES AFFIRMED

Terry Goddard, 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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Robert Michael Bratton's convictions of two counts of third-degree burglary. Bratton's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Bratton was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Bratton's convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 On July 5, 2008, Bratton entered a Tempe drug store.¹ After surveying the area around the cosmetics register, Bratton tossed an object into the enclosure behind the register. He walked behind the register to retrieve the object, paused to study the lock on the register cash drawer, then left the store. About five minutes later, Bratton re-entered the store, approached the cosmetics register, removed a key from his mouth

¹ Upon review, we view the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Bratton. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

and used it to open the register's cash drawer. Bratton took money from the register, then left. The next day, Bratton entered another drug store, unlocked one of its registers and took more money. Bratton's actions on both occasions were caught on surveillance tapes.

¶13 When Bratton was arrested in another pharmacy about a month later, police found a pouch containing small keys in his pocket. After arresting Bratton, police read him his *Miranda* rights and interviewed him for a little more than an hour.² Bratton told police during the interview that he was doing "this" to supplement his income and that he used the money to pay his bills. Bratton said he would guess at which key would fit a particular cash register.

¶14 In addition to police testimony and the testimony of employees from the two drug stores that were burglarized, evidence at trial included a photocopy of the keys found in Bratton's pocket, a bulletin containing still shots from surveillance video footage of the events in the two drug stores, and one of the surveillance videos.

¶15 The jury found Bratton guilty of two counts of third-degree burglary, both Class 4 felonies. The superior court sentenced him to two presumptive prison terms of 2.5 years, to

² See *Miranda v. Arizona*, 384 U.S. 436 (1966).

run concurrently. Bratton timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1) (2003), 13-4031 (2010) and -4033 (2010).

DISCUSSION

¶16 The record reflects Bratton received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings. The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing and imposed a legal sentence on the crimes of which Bratton was convicted.

CONCLUSION

¶17 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Bratton's representation in this

appeal have ended. Defense counsel need do no more than inform Bratton 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. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Bratton has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for reconsideration. Bratton has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/
DIANE M. JOHNSEN, Judge

CONCURRING:

/s/
PATRICIA A. OROZCO, Presiding Judge

/s/
JON W. THOMPSON, Judge