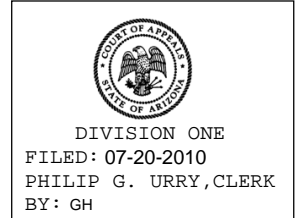


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0515
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
KEVIN STEWART, II,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR 2008-128419-002 DT

The Honorable James T. Blomo, Judge Pro Tempore

AFFIRMED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Kathryn Petroff, Deputy Public Defender
Attorneys for Appellant

T H O M P S O N, Judge

¶1 This case comes to us as an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Kevin Stewart, II

(defendant) has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law and has filed a brief requesting this court to conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has not done so.

FACTUAL AND PROCEDURAL HISTORY

¶2 Defendant was charged by indictment with three counts of armed robbery, class 2 dangerous felonies, three counts of kidnapping, class 2 dangerous felonies; and one count of theft of credit card or obtaining a credit card by fraudulent means, a class 5 felony. The following evidence was presented at trial.¹

¶3 On April 15, 2008, sometime after 2:00 in the morning, defendant and an accomplice, W.W., kicked down the carport door of the victims' home with the intent to rob the victims of their money and some possessions. The victims, N.A. and C.S., testified that defendant was the first to come through the carport door and that he was pointing a silver handgun at them. The third victim, C.M., testified that when he heard the crash

¹ Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against defendant. See *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989)(citation omitted).

he grabbed a baseball bat that was next to him, but immediately dropped it when he saw defendant had a gun. Subsequently, W.W. entered the house through the carport door, grabbed the dropped bat, and proceeded to pat C.M.'s pockets. Defendant asked the victims where the money was. N.A. told defendant his money was on his dresser and C.M. removed about \$200 from his pocket and gave it to W.W. Defendant and W.W. moved the victims into N.A.'s bedroom where defendant removed some cash, a laptop, and N.A.'s cell phone, all the while pointing the handgun in their direction. The victims testified that they heard W.W. rummaging through the rest of the house, while defendant remained in the bedroom pointing the gun at the victims.

¶14 Several weeks after the incident the three victims were able to identify defendant and W.W. in photo lineups provided by the investigating police officers and detectives. They identified defendant as the gunman and reported that during the armed robbery defendant was wearing red shorts and a white short-sleeve T-shirt. During an interview with the police, defendant confessed to possessing a gun on April 15th and taking the victims' money and a laptop.

¶15 At trial, defendant, who testified on his own behalf, admitted to using C.M.'s credit card at a Circle K the morning of the robbery. He explained that he did not know whose card it

was, but knew it was not W.W.'s or A.O's, the other acquaintances who purchased items at the Circle K with the card. Defendant testified that he did not commit the armed robbery and was not present at the victims' house when the robbery was committed. He testified that, before meeting with the police on May 7th, W.W. had given him the details of the armed robbery and had told defendant to tell the police that defendant was the gunman during the armed robbery, and he did so.

¶16 A jury found defendant guilty as charged. The trial court sentenced defendant to a slightly mitigated term of nine years imprisonment for counts one through six and ordered the sentences to run concurrently, with credit for seventy-three days of presentence incarceration. The court also suspended the imposition of sentencing on count seven and ordered defendant to serve three years of supervised probation upon his release from prison. Defendant timely appealed his convictions and sentences. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and Arizona Revised Statutes §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1) (2010).

DISCUSSION

¶17 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 adequately represented by counsel at all stages of the proceedings, and the sentence imposed was within the statutory limits. Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), defendant's counsel's obligations in this appeal are at an end.

CONCLUSION

¶18 We affirm the convictions and sentences.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

DIANE M. JOHNSEN, Judge