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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 09-0548
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SARAH LEANNE GITTINGS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-006555-003 DT

The Honorable Sally Schneider Duncan, Judge

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 Jeremy D. Mussman, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Sarah Leanne Gittings ("Defendant") appeals from the superior court's judgment of guilt and its imposition of sentence for forgery, a class four felony pursuant to A.R.S. § 13-2002.

¶2 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). Defendant's appellate counsel has searched the record on appeal and finds no arguable question of law that is not frivolous. See *Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Defendant was given the opportunity to file a supplemental brief *in propria persona*, but did not do so. Counsel now asks this court to independently review the record for fundamental error. We have done so, and find no fundamental error. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY¹

¶3 In June 2008, the State filed a complaint charging Defendant with one count of forgery pursuant to A.R.S. § 13-2002 (2010)² and one count of aggravated taking the identity of another pursuant to A.R.S. § 13-2009. In August 2008, Defendant

¹ "We view the evidence in the light most favorable to sustaining the verdict[] and resolve all inferences against [Defendant]." *State v. Nihiser*, 191 Ariz. 199, 201, 953 P.2d 1252, 1254 (App. 1997) (citation omitted).

² We cite to the current versions of statutes when no revisions material to our decision have since occurred.

was indicted for the offenses set forth in the complaint. She was arraigned and entered a not guilty plea. She rejected the State's plea offer, and the case proceeded to a jury trial.

¶4 At trial, the State presented evidence that on May 29, 2008, Defendant used another person's driver's license and attempted to cash a check - which the parties stipulated was forged - at a check-cashing and convenience store.

¶5 The store owner testified that Defendant and another woman exited a car and asked him to cash their paychecks, which were from the same employer. The other woman presented her check first, and then Defendant presented her check. The store owner called police because he recognized that the checks were forgeries. Police responded, took Defendant into custody, and interviewed her. The detective who conducted the interview testified that Defendant told him she had traveled to the store by car with several friends, including a man called "Sam." Before Defendant exited the car, Sam gave her the driver's license and the forged check and told her to cash the check. Defendant admitted to the detective that a few days before her arrest, she had cashed a check for Sam and he allowed her to keep a portion of the cash.

¶6 Defendant testified on her own behalf. She testified that when Sam told her to cash the check on May 29, she was surprised and told Sam that she would not comply with his

instruction. In response, Sam reiterated the instruction. Defendant felt intimidated and frightened, but again told Sam that she would not comply. He told her to do as he said or she "would regret it" or "would be sorry."

¶17 Defendant entered the store, got a drink, and went to the counter where her friend was already attempting to cash her forged check. The friend asked Defendant whether she was going to cash her check. Defendant felt "ganged up on" and tried to cash her check, knowing that it was forged.

¶18 After hearing closing arguments and considering the evidence, the jury found Defendant guilty of forgery. The jury was unable to reach a unanimous verdict regarding aggravated taking the identity of another.

¶19 In the aggravation phase of the trial, the jury found three aggravating factors: (1) the offense involved the presence of an accomplice; (2) Defendant committed the offense as consideration for the receipt or in the expectation of the receipt of anything of pecuniary value; and (3) Defendant committed the offense while on probation. While testifying, Defendant had admitted to the prior felony conviction for which probation had been imposed.

¶10 At sentencing, the State withdrew its allegation that Defendant had committed the offense while on probation. The court imposed a super-mitigated sentence of 2.25 years of

imprisonment, with credit for 119 days of presentence incarceration.

¶11 Defendant timely appeals. We have jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1) (2003), 13-4031, and 13-4033(A)(1).

DISCUSSION

¶12 The record reveals no fundamental error. Defendant was present and represented by counsel at all critical stages. The record of voir dire does not demonstrate the empanelment of any biased jurors, and the jury was properly comprised of eight jurors and one alternate. See A.R.S. § 21-102(B) (2002).

¶13 The evidence that the State presented at trial was properly admissible and was sufficient to allow the jury to find Defendant guilty of the charged offense. The jury was properly instructed regarding the offense and Defendant's affirmative defense of duress.

¶14 After the jury returned its verdict, the court received and considered a presentence report. At the sentencing hearing, Defendant was given the opportunity to speak, and the court stated on the record the evidence and materials it considered in imposing sentence. The court then imposed a legal sentence for the offense, and correctly calculated Defendant's presentence incarceration credit.

CONCLUSION

¶15 We have reviewed the record for fundamental error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm Defendant's conviction and sentence. Defense counsel's obligations pertaining to this appeal have come to an end. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and her future options. *Id.* Defendant has thirty days from the date of this decision to file a petition for review *in propria persona*. See Ariz. R. Crim. P. 31.19(a). Upon the court's own motion, Defendant has thirty days from the date of this decision in which to file a motion for reconsideration.

/s/

PETER B. SWANN, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

DANIEL A. BARKER, Judge