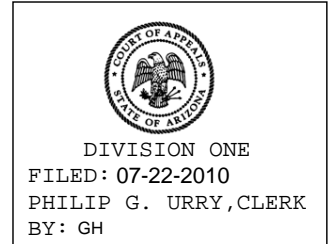


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 09-0645
) 1 CA-CR 09-0648
Appellee,) 1 CA-CR 09-0649
) (Consolidated)
v.)
) DEPARTMENT B
HENRIETTA YVONNE MARTINEZ,)
) **MEMORANDUM DECISION**
Appellant.) (Not for Publication - Rule
) 111, Rules of the Arizona
) Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause Nos. CR 2006-012826-001 DT
CR 2006-012827-001 DT
CR 2009-104465-001 DT

The Honorable Christopher T. Whitten, 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 Margaret M. Green, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Henrietta Yvonne Martinez timely appeals from her
conviction and sentence for taking the identity of another, a

class four felony (CR 2009-104465-001 DT), and her sentences for fraudulent schemes and artifices, a class two felony (CR 2006-012827-001 DT), and unlawful possession of an access device, a class five felony (CR 2006-012826-001 DT). After searching the record on appeal and finding no arguable question of law that was not frivolous, Martinez's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Martinez to file a supplemental brief *in propria persona*, but Martinez chose not to do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Martinez's conviction and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 In May 2008, Martinez purchased a new Chevrolet Silverado for approximately \$50,000 with financing she obtained using the social security number and name of the victim. In August 2008, the victim discovered the loan on her credit report and several months later detectives tracked the truck to Martinez. A grand jury indicted Martinez for taking the

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Martinez. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

identity of another and theft of means of transportation. On June 12, 2009, a jury convicted Martinez on taking the identity of another, the superior court declared a mistrial as to the theft of means of transportation charge, and the State dismissed this charge with prejudice.

¶13 At trial on Martinez's prior felony conviction, the superior court found the State had proven beyond a reasonable doubt Martinez had been convicted of fraudulent schemes or artifices, a class two felony, in 2006. The court also found her current conviction placed her in automatic violation of probation for her prior felony and another felony committed in 2006, unlawful possession of an access device. The court sentenced Martinez to three presumptive terms: 4.5 years for taking the identity of another, with 205 days of presentence incarceration credit; five years for fraudulent schemes or artifices, with 257 days of incarceration credit; and 1.5 years for unlawful possession of an access device, with 225 days of incarceration credit. The sentences for the 2006 convictions were to run concurrently to each other and consecutive to the 2009 conviction.

DISCUSSION

¶14 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Martinez received a fair trial. She was represented by

counsel at all stages of the proceedings and was present at all critical stages.

¶15 The evidence presented at trial was substantial and supports the verdict. The jury was properly comprised of twelve members and the court properly instructed the jury on the elements of the charges, Martinez's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Martinez was given an opportunity to speak at sentencing, and her sentences were within the range of acceptable sentences for her offenses.

CONCLUSION

¶16 We decline to order briefing and affirm Martinez's conviction and sentences.

¶17 After the filing of this decision, defense counsel's obligations pertaining to Martinez's representation in this appeal have ended. Defense counsel need do no more than inform Martinez of the outcome of this appeal and her future options, unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984).

¶18 Martinez has 30 days from the date of this decision to proceed, if she wishes, with an *in propria persona* petition for

review. On the court's own motion, we also grant Martinez 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

PATRICIA K. NORRIS, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

MAURICE PORTLEY, Judge