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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 09-0725
)
Appellee,) DEPARTMENT C
)
) MEMORANDUM DECISION
v.)
) (Not for Publication -
) Rule 111, Rules of the
RENE RAY STARKS,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-149740-001 DT

The Honorable Joseph C. Welty, Judge

AFFIRMED

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

Phoenix

Thomas A. Gorman
Attorney for Appellant

Sedona

B R O W N, Judge

¶1 Rene Ray Starks appeals his convictions and sentences for armed robbery, kidnapping, aggravated assault and misconduct involving weapons. Counsel for Starks 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), advising that after searching the record on appeal, he was unable to find any arguable grounds for reversal. Starks was granted the opportunity to file a supplemental brief *in propria persona*, but has not done so.

¶2 Our obligation 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 conviction and resolve all reasonable inferences against Starks. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶3 Starks was charged by indictment with one count of armed robbery, a class 2 dangerous felony in violation of Arizona Revised Statutes ("A.R.S.") section 13-1904(A) (2010); one count of kidnapping, a class 2 dangerous felony in violation of A.R.S. § 13-1304 (A)(3) (2010); one count of aggravated assault, a class 2 dangerous felony in violation of A.R.S. § 13-1204(A)(2), (8)(a) (2010), and two counts of misconduct

involving weapons, class 4 felonies in violation of A.R.S. § 13-3102(A)(3) and (4) (2010).

¶14 The following evidence was presented at trial. The victim testified that on July 31, 2008, Starks entered a liquor store located near the intersection of 16th Street and University. Starks, who was a regular customer of the store, was wearing a ski mask. He brandished a sawed-off rifle and demanded that the victim give him money. The victim moved to the cash register as Starks held a bag out for the money. After emptying both cash registers, the victim thought Starks was going to leave, but instead he continued to point the rifle at the victim and told him to go to the back of the store. The victim thought Starks was going to kill him.

¶15 As Starks was retreating towards the back of the store, the victim swung and knocked the weapon onto the counter and a struggle ensued. In the meantime, a customer entered the store, heard the victim yelling for help, and immediately left the store. The victim and Starks were still struggling when Starks appeared to have difficulty breathing and removed his mask. The victim recognized Starks and told him "[g]o now. Get out of here." Starks refused, stating "no, I got to get my gun." After several attempts to get Starks to leave, the victim ran out the front door of the store.

¶16 Arizona Department of Public Safety ("DPS") Officer R.G. testified that on July 31, 2008, he was preparing to teach a class in police motorcade procedures at the DPS Knutson substation when a man frantically approached. The man explained to the officer that the store across the street was being robbed. R.G. and several other officers approached the liquor store as the victim ran out the front door of the store. Not knowing if he was the perpetrator, one of the other officers detained the victim. Soon afterward, Starks exited the front door of the store with his rifle drawn, aiming directly at R.G. Starks ignored the command to drop his weapon. R.G. fired a shot at Starks, hitting him in the abdomen.

¶17 The jury found Starks guilty of all five counts and the trial court determined the State met its burden in proving that Starks had four prior felony convictions. The court sentenced him to a combined term of sixty-seven years¹

¹ The sentences imposed were as follows: Count 1, 30 years with 406 days of presentence incarceration credit to be served concurrently with the sentences in counts 2 and 5; Count 2, 30 years with 406 days of presentence incarceration credit, to be served concurrently with the sentences in Counts 1 and 5; Count 3, 25 years with no presentence incarceration credit, to be served consecutively to the sentences in Counts 1, 2 and 5; Count 4, 12 years with no presentence incarceration credit, to be served consecutively to the sentences in Counts 1, 2 and 3; Count 5, 12 years with 406 days of presentence incarceration credit, to be served concurrently with the sentences in Counts 1 and 2.

imprisonment, with 406 days of presentence incarceration credit. Starks timely appealed.

¶18 We have read and considered counsel's brief, and we have reviewed the entire record for fundamental error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. As far as the record reveals, Starks was represented by counsel at all stages of the proceedings, he was given the opportunity to speak before sentencing, and the sentences imposed were within statutory limits.

¶19 Upon the filing of this decision, counsel shall inform Starks of the status of the appeal and his options. Defense counsel has no further obligations, 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). Starks has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

¶10 Accordingly, we affirm Starks' convictions and sentences.

/s/

MICHAEL J. BROWN, Judge

CONCURRING:

/s/

PATRICK IRVINE, Presiding Judge

/s/

DONN KESSLER, Judge