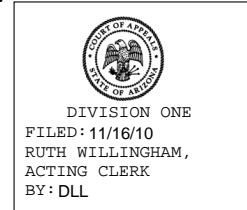


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0751
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
)
JEFFREY SCOTT DOUGLAS,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-123511-001 DT

The Honorable Lisa M. Roberts, Judge Pro Tem

AFFIRMED

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

Maricopa County Public Defender's Office Phoenix
By Eleanor S. Terpstra, Deputy Public Defender
Attorney for Appellant

G E M M I L L, Judge

¶1 Jeffrey Scott Douglas appeals his convictions and sentences for theft, a class six felony, and misconduct involving weapons, a class four felony. Douglas's counsel filed

a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Douglas was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶12 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶13 Douglas and a roommate of his were employed to remodel a house in April 2008. Both men were residents of a halfway house. One day at work the roommate noticed Douglas exiting a bedroom they were not working on and was suspicious of why Douglas would be in that room. The roommate testified that he warned Douglas not to steal anything because he did not want his parole status to be jeopardized. Douglas mentioned to his roommate that there was a gun in the house.

¶14 The next evening back at the halfway house, the roommate heard what he believed to be the sound of an automatic pistol being pulled back and forth coming from Douglas's bedroom. The roommate opened the bedroom door and found Douglas

standing in the middle of the room holding a gun. The roommate was angry because he believed the gun was stolen from the house the two of them had been renovating, so he left and told the director of the halfway house about the gun. He later went back to Douglas's bedroom with the intention of taking the gun from Douglas and returning it to its owner. Douglas expressed an interest in selling the gun, so the roommate pretended to be interested in buying it. The roommate then took the gun from Douglas, but Douglas grabbed the roommate around the neck. The roommate testified that he dragged Douglas out the front door and into the parking lot where the fight continued. Eventually the roommate dropped the gun. At that point, the roommate said, Douglas backed off. According to the roommate, Douglas later confessed that he stole the gun and offered an apology.

¶15 The director of the halfway house saw the two men wrestling over the gun in the parking lot and called the police. When the gun dropped to the ground, the director picked it up and put it in the safe in her office. Once the police arrived, the director gave the gun to them, along with a box of bullets that Douglas told her he had also taken. After the director told the police that Douglas had admitted to taking the gun and bullets, Douglas was arrested.

¶16 Because he was not staying at his house while it was being renovated, the owner of the gun did not realize that his

gun was missing until he "was made aware that the gun might be missing" and "was given the phone number of a police officer." The owner identified the gun over the phone. He then went back to his house and checked the gun safe and his range bag. He noticed that one gun was missing. Inside the range bag was a gun case that contained a lead pipe instead of a gun. The owner testified that he did not give anyone permission to take his gun.

¶17 Douglas was charged with theft and misconduct involving weapons.

¶18 During the course of the case, Douglas inquired about or asked for a change of counsel on several occasions. The first time he raised the issue was during a mental competency hearing. The court discussed with Douglas whether a delay would occur if new counsel was appointed. From the record, it does not appear that a specific motion or request was made, and no ruling was made at that time. The second inquiry was made during the settlement conference. The court told Douglas, "The fact that [defense counsel] gives you legal advice that you don't like or you don't want is not a basis for a new attorney." Three days later, Douglas asked the judge if she had received letters he sent requesting a change of counsel. Douglas was informed that there were no letters in his file, was advised to consult with his attorney, and was told he could not request a

change of counsel in person but instead needed to file a written motion.

¶9 The fourth time Douglas requested a change of counsel was during the second day of trial. In his request, Douglas complained about his alleged medical issues and the failure of the sheriff's department to properly treat them. The court told Douglas that his attorney has no control over the sheriff's department and noted that Douglas did not make any complaints about his attorney. However, the court still inquired into the factors considered in determining whether a change of counsel should be granted and also asked defense counsel for his opinion on some of the factors. Finding no basis for a change of counsel, the court denied Douglas's oral motion.

¶10 After a jury trial, Douglas was convicted as charged and sentenced to the presumptive terms for each conviction.

DISCUSSION

¶11 Douglas asked his attorney to raise three issues on appeal, which we address in turn.

Failure to inquire about oral motions for change of counsel

¶12 First, Douglas claims that the trial court failed to properly inquire about his multiple requests for change of counsel. Although a criminal defendant has a Sixth Amendment right to competent representation, that right does not guarantee counsel of choice or even a meaningful relationship with

counsel. *State v. Peralta*, 221 Ariz. 359, 361, ¶ 4, 212 P.3d 51, 53 (App. 2009). The factors a trial court should consider when deciding whether to grant a defendant's request for change of counsel are:

whether an irreconcilable conflict exists between counsel and the accused, and whether new counsel would be confronted with the same conflict; the timing of the motion; inconvenience to witnesses; the time period already elapsed between the alleged offense and trial; the proclivity of the defendant to change counsel; and quality of counsel.

State v. LaGrand, 152 Ariz. 483, 486-87, 733 P.2d 1066, 1069-70 (1987).

¶13 Douglas asked about or requested a change of counsel during four different proceedings, and each time the court acknowledged his concern. He was told to file a written motion for change of counsel, which he never did.

¶14 Despite not following the court's instruction to file a written motion, the trial judge nonetheless entertained Douglas's oral request during the second day of trial. In his oral motion, Douglas failed to make any argument as to why his attorney should be replaced and instead complained about his alleged medical issues and his perceived mistreatment by the sheriff's department. The trial judge looked into the factors considered when deciding whether to grant a request for change of counsel and asked defense counsel for his opinion on some of

those factors. The court noted that the motion was being made during trial, a jury was waiting, and a witness had been flown in from out-of-state. Defense counsel said he believed new counsel would be confronted with the same issues he was running into with Douglas, and in his opinion there was no irreconcilable conflict between himself and Douglas. Defense counsel then indicated he was ready to effectively represent Douglas at trial.

¶15 Given the trial court's consideration of the appropriate factors, we do not agree that the trial court "failed to properly inquire" about Douglas's oral motion for change of counsel. The court made findings regarding some of the factors and asked defense counsel for his input as to the other factors. Furthermore, in his request, Douglas failed to raise any substantive issues regarding his attorney. We find no error in the trial court's consideration and denial of Douglas's requests or motions for change of counsel.

Ineffective assistance of counsel

¶16 Second, Douglas requested his counsel argue that Douglas "wanted to testify at trial but was advised by his attorney not to testify." Claims of ineffective assistance of counsel are not properly raised on direct appeal but instead must be raised in a petition for post-conviction relief. *State v. Torres*, 208 Ariz. 340, 345, ¶ 17, 93 P.3d 1056, 1061 (2004).

We follow the dictates of our supreme court and therefore do not address this argument in this appeal.

Poor treatment while in custody

¶17 Third, Douglas complains that he was not properly treated for his mercury poisoning while in custody, which made him ill for weeks and therefore unable to assist in his case. This claim is outside the scope of a criminal appeal, so we do not address it.

CONCLUSION

¶18 Having considered defense counsel's brief and examined the record for reversible error, we find none. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.2d 89, 96 (App. 1999). The sentences imposed fall within the range permitted by law, and the evidence presented supports the convictions. As far as the record reveals, Douglas was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶19 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Douglas of the disposition of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. Douglas has

thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

¶20 We affirm Douglas's convictions and sentences.

_____/s/_____
JOHN C. GEMMILL, Presiding Judge

CONCURRING:

_____/s/_____
PATRICIA K. NORRIS, Judge

_____/s/_____
MAURICE PORTLEY, Judge