

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



DIVISION ONE
FILED: 08/12/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0781
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JOHN EDWARD PERRY CONNER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-161198-001 DT

The Honorable J. Kenneth Mangum, Judge

AFFIRMED

Terry Goddard, Arizona 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 Eleanor S. Terpstra
Attorneys for Appellant

B R O W N, Judge

¶1 John Edward Perry Conner appeals his conviction and sentence for burglary. Counsel for Conner 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, she was unable to find any arguable grounds for reversal. Conner was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶12 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 the appellant. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶13 Conner was charged with one count of burglary in the second degree, a class 3 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1507 (2010). The following evidence was presented at trial.

¶14 In the summer of 2008, Conner's apartment complex was in foreclosure and the water had been shut off due to non-payment.¹ Conner testified that his neighbor had the water to the complex turned back on in his own name and then cut the

¹ At the time of this incident, the owner of the property lived in California. His son managed the property on his behalf. For ease of reference, we refer to the son as "landlord."

pipes to Conner's unit following a dispute between them regarding the water bill.

¶15 In September, 2008, a witness called 9-1-1 and reported that he saw Conner taking cabinets and copper pipes from two vacant units to his own unit. Police responded, detained Conner, and observed cabinets outside his unit and copper pipes in his kitchen. Police inspected the vacant units and found pipes missing and damage to the walls, cabinets, fixtures, and door locks. Conner told police that he had a key to the vacant units and that he took the pipes to replace the line that his neighbor had cut.

¶16 At trial, Conner testified that he had an oral agreement with the landlord to do maintenance work at the complex in exchange for a reduction in rent. He asserted that he believed he was allowed to enter the units because the landlord routinely asked him to take items from vacant units in order to keep the occupied units functioning. Conner admitted, however, that the landlord had not expressly given him permission to take the pipes. Conner presented a key, receipts reflecting purchases for maintenance supplies, and rent receipts purportedly signed by the landlord to support his testimony. Additionally, a neighbor testified that he had heard Conner and the landlord discuss that Conner would do work around the complex "[b]ecause he didn't have the money for his rent."

Conner also testified that the cabinets outside his unit were from his own kitchen and he had removed them to address a mold problem.

¶17 The landlord testified he did not give Conner permission to enter the units and take pipes from the wall. He further asserted that he did not have an agreement with Conner to trade work for rent and claimed the rent receipts Conner presented were not authentic. The landlord also testified that he did not give Conner a key to the vacant units and that he never used the brand of lock represented on the key Conner claims he used to enter the units.

¶18 Following a four-day trial, the jury found Conner guilty of burglary. The trial court placed Conner on three years supervised probation, with special terms that included eight months in the county jail and fifty hours of community service. Conner timely appealed.

¶19 Although Conner has not filed a supplemental brief, he requested that his counsel raise two issues on appeal. Conner first asserts his "actual innocence." He also argues that his "trial counsel failed to adequately prepare for trial and communicate with him," which we construe as a claim of ineffective assistance of counsel.² Conner further claims that

² Conner's claims of actual innocence and ineffective assistance of counsel must be addressed in a petition for post-

the landlord "lied on the stand." We construe this argument as challenging the sufficiency of the evidence presented at trial. We will reverse a conviction for insufficiency of evidence only "if there is a complete absence of probative facts to support the conviction." *State v. Scott*, 113 Ariz. 423, 424-25, 555 P.2d 1117, 1118-19 (1976).

¶10 To prove that Conner committed burglary, the State had to show that he "enter[ed] or remain[ed] unlawfully in or on a residential structure with the intent to commit any theft or any felony therein." A.R.S. § 13-1507(A). "A person commits theft if, without lawful authority, the person knowingly . . . [c]ontrols property of another with the intent to deprive the other person of such property." A.R.S. § 13-1802(A)(1) (2010).

¶11 The only elements in dispute at trial were whether Conner had entered the vacant apartments unlawfully and whether he had lawful authority to take the pipes. Conner maintained that he had an oral agreement with the landlord to do work around the complex in exchange for rent credit and that as part of that work he sometimes took items from vacant units to repair occupied units. Conner admitted, however, that he did not have express permission from the landlord to take the pipes. The landlord testified that he did not have an agreement with Conner

conviction relief. See Ariz. R. Crim. P. 32.2(b); *State v. Torres*, 208 Ariz. 340, 345, ¶ 17, 93 P.3d 1056, 1061 (2004).

to trade rent for work and that he did not give Conner permission to enter the units and take pipes from the wall. Although the landlord's testimony regarding whether Conner had implied permission to enter the vacant units and the existence of a work-for-rent agreement contradicted Conner's testimony, "[i]t is the trier of fact's role, and not this court's, to 'resolve conflicting testimony and to weigh the credibility of witnesses.'" *State v. Lee*, 217 Ariz. 514, 516, ¶ 10, 176 P.3d 712, 714 (App. 2008) (quoting *State v. Alvarado*, 158 Ariz. 89, 92, 761 P.2d 163, 166 (App. 1988)).

¶12 Based on the evidence and testimony presented, the jury could have reasonably concluded that Conner unlawfully entered the vacant apartments and took the pipes without legal authority. We will not substitute our judgment for that of the jury, as it is their role to weigh testimony and assess the credibility of witnesses. *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004). Thus, we find there was sufficient evidence to support the jury's verdict.

¶13 We have read and considered counsel's brief and have reviewed 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 accordance with the Arizona Rules of Criminal Procedure. The record shows that Conner was present and represented by counsel at all pertinent stages of the

proceedings, he was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Accordingly, we affirm Conner's conviction and sentence.

¶14 Upon the filing of this decision, counsel shall inform Conner 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). Conner 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.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

JON W. THOMPSON, Judge

/s/

SHELDON H. WEISBERG, Judge