DIVISION ONE
FILED: 08/19/2010
RUTH WILLINGHAM, ACTING CLERK
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**IN THE COURT OF APPEALS**
**STATE OF ARIZONA**
**DIVISION ONE**

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| STATE OF ARIZONA,<br><br>Appellee,<br><br>v.<br><br>DEBRA SUE MCCANN,<br><br>Appellant. | ) | No. 1 CA-CR 09-0816<br><br>DEPARTMENT E<br><br>**MEMORANDUM DECISION**<br><br>(Not for Publication – Rule 111, Rules of the Arizona Supreme Court) |

Appeal from the Superior Court in Yavapai County

Cause Nos. V1300CR820070727; V1300CR820080462

The Honorable Tina R. Ainley, Judge

**AFFIRMED**

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

Abigail Jensen — Phoenix
Attorney for Appellant

Debra Sue McCann — Phoenix
Appellant

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**H A L L**, Judge

**¶1** Debra Sue McCann (defendant) appeals from her convictions and the sentences imposed. Defendant's appellate 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), advising that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which she has done, raising several issues. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

**¶2** We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. *See State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented in a light most favorable to sustaining the verdict. *State v. Cropper,* 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

**¶3** On October 7, 2007, defendant was charged by indictment with one count of trafficking in stolen property in the first degree, a class two felony, in violation of Arizona Revised Statutes (A.R.S.) section 13-2307(B) (2010); one count of theft, a class five felony, in violation of A.R.S. § 13-

1802(A)(1), (G) (2010); and two counts of forgery, class four felonies, in violation of A.R.S. § 13-2002(A) (2010).

**¶4** The following evidence was presented at trial. In the summer of 2007, S.S. received a financial aid check in the amount of approximately $2,600 to help pay for her fall semester of school. On August 22, 2007, S.S. stayed the night at defendant's home. That evening, defendant drove S.S. to a bank to cash the financial aid check and then drove S.S. to a Wal-Mart to purchase money order checks. S.S. purchased two money order checks in amounts of $900 and $500. When defendant and S.S. returned to defendant's home, defendant suggested that she hold on to S.S.'s wallet containing the money order checks and remaining cash because she was concerned that her adult son, P.C., may steal it. S.S. gave defendant her wallet for safe-keeping.

**¶5** The following morning, S.S. asked defendant to return her wallet and defendant said that it was no longer in the dresser drawer where she had placed it. Defendant told S.S. that she believed P.C. stole the wallet.

**¶6** Later that afternoon, S.S. called the police to report the stolen wallet. When the police arrived at defendant's home to take a full report and assess the crime scene, S.S. informed the officers that she had also placed her grandmother's ring in the wallet for safe-keeping. S.S. informed the police that

defendant and P.C. were the only two people that knew she had the financial aid funds and were in the vicinity of the wallet.

**¶7** S.S. also notified Wal-Mart that her money orders had been stolen. In early September 2007, a Wal-Mart asset protection employee notified the police that S.S.'s $900 money order had been cashed.

**¶8** Detective L.M. of the Camp Verde Marshall's Office then contacted R.H., the signing party on the $900 money order. R.H. told Detective L.M. that defendant had offered to pay him to cash both money order checks. Detective L.M. then spoke with defendant's son and he informed the detective that defendant had stolen the checks. When Detective L.M. questioned defendant, she admitted that she drove R.H. to the two Wal-Marts where he separately cashed S.S.'s money order checks, but she claimed she did not steal S.S.'s wallet. Nonetheless, defendant admitted that only she and S.S. knew where she had hidden the wallet. Detective L.M. placed defendant under arrest.

**¶9** After a three-day trial, the jury found defendant guilty as charged. Defendant admitted a historical prior felony conviction, and the trial court sentenced her to a mitigated 6-year term of imprisonment on the count of trafficking in stolen property, a concurrent, presumptive 2.25-year term of imprisonment on the count of theft, and concurrent, presumptive 4.5-year terms of imprisonment on the counts of forgery.

## DISCUSSION

### I. Sufficiency of the Evidence

**¶10** Defendant argues that she is innocent of the crimes for which she was convicted. We construe this argument as a challenge to the sufficiency of the evidence.[1]

**¶11** "We review the sufficiency of the evidence presented at trial only to determine if substantial evidence exists to support the [] verdict." *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). "Substantial evidence is more than a mere scintilla and is such proof that 'reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citations omitted). "To set aside a [] verdict for insufficient evidence, it must clearly appear that upon no hypothesis whatever is there sufficient evidence to support" the conviction. *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). In determining whether substantial evidence exists, we view the facts in the light most favorable to sustaining the verdict and resolve all inferences against the defendant. *Stroud*, 209 Ariz. at 412, ¶ 6, 103 P.3d at 914.

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[1] If defendant, however, intended to challenge her convictions on the basis of actual innocence pursuant to Arizona Rule of Criminal Procedure 32.1(h), she must do so in a petition for post-conviction relief. *See* Ariz. R. Crim. P. 32.3(b).

**¶12** Pursuant to A.R.S. § 13-1802(A)(1), a person who knowingly "controls property of another with the intent to deprive the other person of such property" commits theft. Under A.R.S. § 13-2307(B), a "person who knowingly initiates, organizes, plans, finances, directs, manages or supervises the theft and trafficking in the property of another that has been stolen is guilty of trafficking in stolen property in the first degree." The evidence presented at trial demonstrated that only defendant and S.S. knew where defendant placed S.S.'s wallet for safe-keeping. The evidence also shows that defendant approached R.H. and offered to pay him to cash S.S.'s money order checks and that she drove him to both Wal-Mart locations to facilitate the cashing of both checks. Accordingly, there was sufficient evidence that a reasonable jury could find that defendant knowingly controlled S.S.'s wallet with the intent to deprive her of it and initiated and organized the trafficking of that stolen property.

**¶13** Pursuant to A.R.S. § 13-2002(A)(1), a person who falsely completes a written instrument with the intent to defraud commits forgery. Under A.R.S. § 13-303 (2010), a person who solicits or commands another person to engage in proscribed conduct is guilty of the underlying offense. The evidence presented at trial demonstrates that defendant approached R.H. and offered to pay him to cash the stolen money order checks.

Defendant also assisted R.H. by driving him to the two Wal-Marts where he falsely completed the money order checks and cashed them. Thus, there was sufficient evidence that a reasonable jury could find that defendant solicited and assisted R.H. in forging S.S.'s money order checks.

**II. Ineffective Assistance of Counsel**

**¶14** Defendant asserts a claim of ineffective assistance of counsel. She contends that defense counsel failed to act professionally and also raises numerous claims that he failed to present evidence to contradict the State's evidence and undermine the State's witnesses. We do not address claims of ineffective assistance of counsel in a direct appeal, regardless of their merit. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002) ("[I]neffective assistance of counsel claims are to be brought in Rule 32 proceedings.").

**III. Juror Dismissal**

**¶15** Defendant argues that the trial court "t[ook] a juror off at the very last minute and put someone else in his place." Defendant has not cited any portion of the record to support this claim and our review of the record does not reflect evidence to support this assertion. Instead, following closing arguments, the trial court drew an alternate juror and excused that juror from the remainder of the proceedings.

**¶16** We have read and considered counsel's brief and have searched 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 compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits.

**¶17** After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and her future options, unless counsel's review reveals 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). Defendant has thirty days from the date of this decision to proceed, if she desires, with a pro per motion for

reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

_/s/_____
PHILIP HALL, Judge

CONCURRING:

/s/
DIANE M. JOHNSEN, Presiding Judge

/s/
PATRICK IRVINE, Judge