DIVISION ONE
FILED: 07/01/10
PHILIP G. URRY, CLERK
BY: JT

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 09-0900
	)	
Appellee,	)	DEPARTMENT C
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
RYAN MICHAEL MCBEE,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-006777-001 DT

The Honorable Julie P. Newell, Judge *Pro Tem*

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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

D O W N I E, Judge

¶1 Ryan Michael McBee ("defendant") timely appeals his criminal conviction and sentence. Pursuant to *Anders v. California,* 386 U.S. 738 (1967), and *State v. Leon,* 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has advised that a thorough search of the record was conducted, and no arguable question of law was found. Counsel requests that we review the record for fundamental error. *See State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given an opportunity to file a supplemental brief *in propria persona*, but he has not done so.

FACTS AND PROCEDURAL HISTORY[1]

¶2 Defendant and B.T. dated for approximately three months. The relationship ended on unfriendly terms, and defendant was served with a "restraining order" on September 25, 2008.[2] At 5:00 p.m. on September 29, defendant went to B.T.'s house. When she asked him to leave, defendant began yelling and threw a "cement rock" that shattered the windshield and rear window of B.T.'s car. He also repeatedly kicked the car, breaking the side mirror and a driver-side window. Defendant

[1] We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the verdict. *State v. Tamplin*, 195 Ariz. 246, 246, ¶ 2, 986 P.2d 914, 914 (App. 1999) (citation omitted).

[2] The record does not disclose whether the "restraining order" was an injunction against harassment or an order of protection. However, it is not necessary to resolve this factual question for purposes of this appeal.

then got into his car and left. When Officer J.G. arrived, he saw shattered windows, dents, and a footprint on the door of the car.

¶3 Defendant was charged with two counts of criminal damage. Count 1 alleged that he caused $2000 or more in damage to B.T.'s car on September 29, a class 5 felony. Count 2 alleged that he caused between $250 and $2000 in damages to B.T.'s car on November 25, 2008, a class 6 felony. The State alleged two historical priors. The State also alleged defendant committed the Count 1 offense while on parole. The trial court granted a defense motion to sever Count 2, and defendant pled no contest to Count 2. The case proceeded to trial on Count 1.

¶4 At the conclusion of the State's case, defendant moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20, arguing there was insufficient evidence that he caused the full amount of estimated damages, which exceeded $3000. The trial court denied the motion, stating B.T. testified that she made clear to the repair facility which damages were caused by defendant and which were pre-existing.

¶5 Defendant took the stand and admitted throwing the rock at B.T.'s windshield, but denied throwing it at the rear window. He also admitted breaking the driver-side window by punching it, but denied kicking the car. A defense witness

testified that the car looked "like somebody hadn't really been taking care of it" before the incident.

¶6 The jury deliberated and returned a guilty verdict on Count 1. However, it found the damages were between $250.01 and $1999.99 (a class 6 felony under the then existing statute). At sentencing, defendant admitted having a prior felony conviction and being on parole at the time of the offense. The court found his criminal history to be an aggravating factor and found no mitigating factors. Defendant was sentenced to an aggravated term of two years in prison on Count 1. On Count 2, defendant received a one-year presumptive prison term, to be served concurrently with Count 1. Defendant received fifty-nine days of pre-sentence incarceration credit.

DISCUSSION

¶7 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. *Leon,* 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within the statutory range.

¶8 The trial court properly denied defendant's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence 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). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶9 The State presented substantial evidence that defendant caused over $3000 in damages as to Count 1, including testimony from three witnesses, as well as photographs of the damages, and repair estimates. Although the jury ultimately concluded that the damages were less than $2000, the evidence supports its determination that damages exceeded $250.

CONCLUSION

¶10 Defendant's convictions and sentences are affirmed. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than inform defendant of the status 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, defendant shall have thirty days from the date of this decision to proceed, if he so

desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/
DONN KESSLER, Judge

/s/
PETER B. SWANN, Judge