

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



DIVISION ONE
FILED: 12/28/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,) 1 CA-CR 10-0002
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ROBERT MALONEY MILLER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-111049-001 DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

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

Maricopa County Public Defender Phoenix
By Terry J. Reid, Deputy Public Defender
Attorneys for Appellant

I R V I N E, Judge

¶1 This appeal is timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969). Counsel for Robert Maloney Miller asks this Court to search the record for fundamental error. Miller was given an opportunity to file a supplemental brief in propria persona, but he has not done so. After reviewing the record, we affirm his convictions and sentences.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences therefrom against Miller. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). Around midnight on February 12, 2009, a police officer approached Miller's van in the corner of the parking lot of an adult shop. Miller exited the van to speak to the officer, leaving the door wide open for the officer to see inside. In the center console, the officer noticed a pipe sticking out of the ashtray and, a few inches away from it, something he suspected was crack cocaine. When asked about these items, Miller replied: "Yeah, it's a crack pipe," and "Yeah, it's a crack rock." Lab tests revealed the rock was thirty-six milligrams of crack cocaine in usable condition.

¶3 The State charged Miller with possession or use of narcotic drugs, a class 4 felony (Count 1) and possession of drug paraphernalia, a class 6 felony (Count 2). At the close of

the evidence, the trial court properly instructed the jury on the elements of the offenses. Miller was convicted as charged.

¶4 The sentencing hearing was conducted in compliance with Miller's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. Although the State alleged Miller was ineligible for probation due to a prior violent felony, the trial court found the State failed to meet its burden of proof. Ariz. Rev. Stat. § 13-901.01(B) (2010).¹ It sentenced Miller to concurrent terms of eighteen months' probation on each count as a second strike. *Id.* at § 13-901.01(A), (H)(1).

DISCUSSION

¶5 We review Miller's convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Miller has advised this Court that after a diligent search of the entire record, he has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the 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. So far as the record reveals, Miller was represented by counsel at all stages of the proceedings. The court held the appropriate pretrial

¹ We cite to the current version of applicable statutes because no revisions material to this decision have since occurred.

proceedings. The State presented evidence sufficient to allow the jury to convict Miller as charged. The jury was properly comprised of eight jurors and one alternate. The court properly instructed the jury on the elements of the offense, the State's burden of proof beyond a reasonable doubt and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by jury polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing. At sentencing, Miller and his counsel were given an opportunity to speak and the court imposed a legal sentence. We decline to order briefing and we affirm Miller's convictions and sentences.

¶6 Upon the filing of this decision, defense counsel shall inform Miller of the status of his appeal and of his future 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). Miller shall have thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. On the court's own motion, we extend the time for Miller to file a pro per motion for reconsideration to thirty days from the date of this decision.

CONCLUSION

¶7 We affirm Miller's convictions and sentences.

/s/
PATRICK IRVINE, Judge

CONCURRING:

/s/
LAWRENCE WINTHROP, Presiding Judge

/s/
PATRICIA NORRIS, Judge