

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: 11/02/10
RUTH WILLINGHAM,
ACTING CLERK
BY: DLL

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

STATE OF ARIZONA,) 1 CA-CR 10-0113
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
EMILY JEAN HOOVER,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-007565-001DT

The Honorable Richard J. Trujillo, Judge

AFFIRMED

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

Michael J. Dew Phoenix
Attorney for Appellant

I R V I N E, Judge

¶1 This appeal is 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 Emily Jean Hoover

("Hoover"), asks this Court to search the record for fundamental error. Hoover was given an opportunity to file a supplemental brief in propria persona. Hoover has not done so. After reviewing the record, we affirm Hoover's conviction and sentence.

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 against Hoover. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). Hoover was formerly employed at a company and was alleged to have stolen more than \$100,000 from the company during the time period of January 1, 2002 to May 1, 2006. The owners of the company confronted Hoover and she was subsequently arrested. Hoover admitted to taking over \$100,000 from her employer. Hoover argued, however, that she had an agreement with the owner of the business to conceal certain illegal dealings in exchange for the money she was taking. The owner denied the existence of such an agreement and denied that she permitted Hoover to transfer monies from the company into Hoover's personal accounts.

¶3 The State charged Hoover with theft greater than \$100,000, a class 2 felony. Hoover was convicted as charged. The trial court conducted the sentencing hearing in compliance with Hoover's constitutional rights and Rule 26 of the Arizona Rules

of Criminal Procedure. The trial court sentenced Hoover to seven years' imprisonment with credit for forty-four days presentence incarceration.

DISCUSSION

¶4 We review Hoover's conviction and sentence for fundamental error. See *State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Hoover has advised this Court that after a diligent search of the entire record, he has found no arguable question of law. The Court has 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, Hoover was represented by counsel at all stages of the proceedings. The court held the appropriate pretrial hearings. The State presented evidence sufficient to allow the jury to convict Hoover 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, Hoover and her counsel were

given an opportunity to speak and the court imposed a legal sentence. We decline to order briefing, and we affirm Hoover's conviction and sentence.

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

CONCLUSION

¶6 We affirm Hoover's conviction and sentence.

/s/

PATRICK IRVINE, Judge

CONCURRING:

/s/

LAWRENCE F. WINTHROP, Presiding Judge

/s/

PATRICIA K. NORRIS, Judge