

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 01-14-2010  
PHILIP G. URRY, CLERK  
BY: DN

In re )  
 ) 1 CA-JV 09-0119  
 )  
Angel E. ) DEPARTMENT E  
 )  
 )  
 ) MEMORANDUM DECISION  
 ) (Not for Publication -  
 ) 103(G) Ariz. R.P. Juv.  
 ) Ct.; Rule 28 ARCAP)  
 )  
 )

Appeal from the Superior Court in Maricopa County

Cause No. JV 547977

The Honorable Brian K. Ishikawa, Judge

**AFFIRMED**

Andrew P. Thomas, Maricopa County Attorney Phoenix  
By Elizabeth B. Ortiz, Appeals Bureau Chief  
Attorney for Appellee

Law Office of Kathleen M. Mucerino Sun City  
By Kathleen M. Mucerino  
Attorney for Appellant

**K E S S L E R**, Judge

¶1 Angel E. (Juvenile) filed an *Anders* appeal from the juvenile court's orders that Juvenile be jointly and severally

liable with his codefendants for \$1000 of restitution to Creighton School District and \$11,152.54 to the Arizona School Risk Retention Trust, Inc., (Insurer). Such orders resulted from Juvenile's plea of guilty to one count of solicitation to commit burglary in the third degree in violation of Arizona Revised Statutes ("A.R.S.") sections 13-303(B)(1) and -1506 (Supp. 2009).<sup>1</sup> For the reasons stated below, we affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶12 In July 2008, the State petitioned the juvenile court to adjudicate Juvenile delinquent for third degree burglary and aggravated criminal damage. Juvenile entered a plea agreement, pleading delinquent to one count of solicitation to commit burglary in the third degree and agreeing to pay court ordered restitution up to \$100,000.<sup>2</sup>

¶13 The juvenile court conducted a hearing on the plea agreement. After colloquy with Juvenile, the juvenile court found that the plea agreement was knowing, intelligent and voluntary and supported by a factual basis. The court found that the Juvenile had not consumed any drug besides his ordinary

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<sup>1</sup> We cite the current version of statutes in which no material revisions have occurred.

<sup>2</sup> The substantial disparity between the amount of restitution referred to in the plea agreement and that actually found was due to uncertainty regarding whether Juvenile's theft, which included a master key to the school, would require rekeying the entire high school. The cost of that would have been approximately \$75,000.

prescriptions in the last twenty four hours, and that Juvenile had been counseled by his attorney on the plea agreement and understood it. The court supplemented Juvenile's understanding by explaining the possible dispositions and that Juvenile had a right not to plead delinquent and to contest the petition. Juvenile advised the court of the factual basis for his plea by admitting to breaking into a Creighton School District building with his two codefendants and committing acts of theft and vandalism.

¶4 In August 2008, the juvenile court conducted a disposition hearing for Juvenile. Juvenile was present and represented by counsel. The juvenile court found that there was a substantial probability that Juvenile could remain at liberty without reoffending, so it placed him on intensive probation in the physical custody of his parents. The court ordered restitution be held open for forty-five days.

¶5 At the restitution hearing, the juvenile court found that Creighton School District, the victim of the vandalism, had suffered actual economic loss of \$1000, and entered an order of restitution in that amount. Upon stipulation by the parties, the juvenile court also ordered that restitution for Insurer be held open for six months from the date of the order, September 23, 2008.

¶16 The juvenile court subsequently conducted a second restitution hearing. At the hearing, Juvenile objected to the court's consideration of Insurer's Verified Victim Statement ("VVS"), alleging that it was untimely filed. The clerk's stamp on the VVS showed a filing date of March 24, one day after the court's deadline. The Court delayed ruling on the issue until it received briefs on whether to accept the VVS. The State argued, *inter alia*, that because the clerk's stamp on the VVS read 7:49 a.m. on March 24, the court should find that the postal service actually delivered the VVS on the deadline, March 23, because the United States Postal Service does not ordinarily deliver mail before eight in the morning. The juvenile court found that the VVS was physically received by the clerk's office on March 23 and that this complied with the court's scheduling order. The court considered the VVS and entered a restitution order making Juvenile jointly and severally liable with his codefendants for \$11,152.54, the entire amount Insurer claimed in its VVS. Juvenile did not dispute the amount claimed in the VVS and the court permitted Juvenile to pay it on the exact terms he requested.

¶17 Juvenile filed a notice of appeal on July 10, 2009. This was eleven days after the issuance of the restitution order and within the fifteen day limit of Rule 104(a), Arizona Rules of Procedure for the Juvenile Court. This Court has

jurisdiction pursuant to Article 6, Section 9 of the Arizona Constitution and A.R.S. §§ 8-235(A) (2007), 12-120.21(A)(1) (2003).

#### ANALYSIS

¶18 The juvenile court did not err by accepting Juvenile's plea. We review the juvenile court's acceptance of a plea agreement for an abuse of discretion. *State v. Super. Ct. In and For County of Navajo*, 183 Ariz. 327, 330, 903 P.2d 635, 638 (App. 1995). After colloquy, the juvenile court found that the plea was knowingly, intelligently, and voluntarily made. The court found that Juvenile was making the plea without the influence of any drugs other than his ordinary prescriptions and that his attorney had counseled him on the plea agreement. The juvenile court explained the possible dispositions to Juvenile and informed him of his right to plead not delinquent.

¶19 The juvenile court also received an appropriate factual basis for the plea agreement. Juvenile pled delinquent to the charge of solicitation of burglary in the third degree. A person commits solicitation of a crime by soliciting, or commanding that another person commit the crime. A.R.S. 13-303(B)(1). Solicitation includes any conduct which incites, moves, induces, or persuades another to commit a criminal offense. II The Compact Edition of the Oxford English Dictionary 2911 (Oxford University Press 1971). Participation

in a common scheme may induce other participants to carry it out as well, because they know they will have the support of an accomplice. A person commits burglary in the third degree by entering or remaining unlawfully in a nonresidential structure with the intent to commit a theft or any felony therein. A.R.S. § 13-1506(A)(1). Juvenile stated in his colloquy that he entered a Creighton school building unlawfully with his codefendants and took property from the school. The juvenile court could reasonably infer that this participation encouraged the other defendants to commit burglary as well. Therefore, we hold that the court had an adequate factual basis to support the plea.

¶10 The juvenile court did not err making Juvenile jointly and severally liable for \$1000 to Creighton and \$11,152.54 to Insurer. We review awards of restitution for an abuse of discretion. *In re Richard B.*, 216 Ariz. 127, 130, ¶ 12, 163 P.3d 1077, 1080 (App. 2007) (citation omitted). The juvenile court does not abuse its discretion when its ruling is supported by evidence and the court applies the correct legal standard. *Id.* The juvenile court may order restitution for actual economic losses caused by the juvenile's offense. A.R.S. § 8-344(A),(B) (2007). The court made the award after an adversarial proceeding in which Juvenile was present and represented by counsel. The amount of the award was supported

by affidavit, which included an itemized statement of the damages and supporting documentation to verify the cost of each item. The court properly made the three codefendants jointly and severally liable because they acted in concert when causing the damage. See *State v. Lewis*, 222 Ariz. 321, 326-27, ¶ 18, 214 P.3d 409, 414-15 (App. 2009) (citations omitted).

¶11 We have read and considered counsel's brief and examined the entire record for fundamental error. We find none. Juvenile was present and represented by counsel at all hearings. His disposition was within the range of dispositions permitted by A.R.S. § 8-341 (Supp. 2009). The juvenile court permitted Juvenile to speak during the disposition hearing. The court stated on the record the evidence and materials considered as well as the factors in imposing the disposition.

¶12 After the filing of this decision, counsel's obligations pertaining to Juvenile in this appeal have ended. Counsel need do no more than inform Juvenile of the status of the appeal and of Juvenile's 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). On the Court's own motion, Juvenile shall have thirty days from the date of this decision to proceed, if he so desires, with a petition for review.

**CONCLUSION**

¶13 For the foregoing reasons, we affirm the juvenile court's acceptance of Juvenile's plea agreement, disposition, and restitution order.

/s/  
DONN KESSLER, Presiding Judge

CONCURRING:

/s/  
LAWRENCE F. WINTHROP, Judge

/s/  
SHELDON H. WEISBERG, Judge