

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: 01/19/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,) 1 CA-CR 10-0700
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
DANIEL SCOTT CLARK,) Arizona Supreme Court)
)
Appellant.)
)
)
)
)

Appeal from the Superior Court in Mohave County

Cause No. CR2008-1320

The Honorable Lee F. Jantzen, Judge

AFFIRMED

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

Jill L. Evans, Mohave County Appellate Defender Kingman
Attorney for Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Daniel Scott Clark has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant has not filed a supplemental brief.

FACTS¹

¶2 Defendant was arrested on November 19, 2008, after Mohave County deputies found him in a remote area several hours after a reported burglary at a nearby power plant. The plant contained a substation with transmission and power lines, and support poles grounded with copper wiring. The copper wires had been stripped away, cut, and assembled into piles.

¶3 Before the burglary was reported, the security guard discovered that the lock on the access gate was missing and that a hole had been cut in the fence. He also saw the taillights of a vehicle as it drove away from the opening in the fence. When deputies followed the path, they found Defendant in a cargo van that was stuck in the sandy terrain. The van contained gloves

¹ We review the facts in the light most favorable to sustaining the verdict. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989) (citation omitted).

and a toolbox, and several pieces of copper wire were discovered nearby.

¶4 Even though Defendant told the deputies that he had pulled into the area from a nearby highway and had been there for almost ten hours, the deputies testified at trial² that the fresh tracks by the cut fence led them to Defendant's location, and that the tire tracks leaving the substation were consistent with those of the van. They also testified that Defendant could not have driven to that area from the highway because a steel cable prevented access to the location where Defendant was found.

¶5 A jury found Defendant guilty of burglary in the third degree, a class four felony.³ The State subsequently proved that he had a prior felony conviction and Defendant was sentenced to a mitigated prison sentence of three and a half years with 133 days of presentence incarceration credit.

¶6 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona

² Defendant was voluntarily absent from his trial. He later advised the trial court that he did not attend his trial because he was preoccupied with arranging for his elderly mother's care.

³ At the State's request, the court dismissed the criminal damage count with prejudice. The burglary charge was amended at trial because the power plant was determined to be a fenced commercial yard, and not a nonresidential structure as charged in the indictment.

Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2011), 13-4031 (West 2011), and 13-4033(A)(1) (West 2011).

DISCUSSION

¶7 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. Although Defendant was voluntarily absent from his trial, the record, as presented, reveals that he was represented by counsel at all stages of the proceedings. Furthermore, the sentence imposed was within the statutory limits and Defendant received the correct amount of presentence incarceration credit.

CONCLUSION

¶8 Accordingly, we affirm Defendant's conviction and sentence.

¶9 After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless a 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). Defendant can,

if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/s/

MAURICE PORTLEY, Judge

CONCURRING:

/s/

JON W. THOMPSON, Presiding Judge

/s/

JOHN C. GEMMILL, Judge