

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: 03/29/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

STATE OF ARIZONA,) 1 CA-CR 10-1021
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
JAVIER PACHECO RAMOS,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-173159-001 SE

The Honorable Connie Contes, Judge

AFFIRMED

Thomas C. Horne, 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 Cory Engle, Deputy Public Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Javier Pacheco Ramos timely appeals from his conviction and sentence for burglary in the third degree. After searching the record on appeal and finding no arguable question

of law that was not frivolous, Ramos's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Ramos to file a supplemental brief *in propria persona*, but Ramos did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Ramos's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 On November 19, 2009, the victim, a landscaper, left his lawnmower in the bed of his pickup truck, which was parked in the carport next to his home. At around one o'clock the next morning, the victim, responding to a loud noise outside, looked out the window and discovered his lawnmower was missing from the bed of his truck. The victim also saw a dark-colored compact pickup truck with no grill parked in front of his house. The truck quickly pulled away, and the victim unsuccessfully attempted to follow the truck in his own vehicle. The victim then called the police and an officer quickly responded, met

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Ramos. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

with the victim, and issued the victim's description of the compact pickup truck over the radio.

¶13 A second officer heard the description of the truck and shortly thereafter saw a truck matching the description drive past with a lawnmower in the bed. He, with the help of other officers, pulled the truck over and arrested the driver and Ramos, the passenger. The police then brought the victim to the scene, where he identified the lawnmower as his and the truck as the same one he had seen outside his house. The police also found in the truck bed various pieces of equipment they believed had been stolen from an air conditioning company van that was parked nearby.

¶14 A grand jury indicted Ramos on two counts -- one count for the lawnmower and one count for the air conditioning equipment -- of burglary in the third degree, class four felonies. After a trial during which the State presented substantial evidence supporting the first count but little evidence supporting the second, the jury found Ramos guilty of burglary in the third degree as to the lawnmower but not guilty of the alleged burglary of the air conditioning van. The superior court sentenced Ramos, as a category three repetitive offender, to a "slightly mitigated" prison term of 9.5 years with 41 days of presentence incarceration credit.

DISCUSSION

¶15 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Ramos received a fair trial. He was represented by counsel at all stages of the proceedings and was present at all critical stages.

¶16 The evidence presented at trial supporting count one was substantial and supports the verdict. The jury was properly comprised of 12 members and the court properly instructed the jury on the elements of the charges, Ramos's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Ramos spoke at the sentencing hearing, and his sentence was within the range of acceptable sentences for his offense.

CONCLUSION

¶17 We decline to order briefing and affirm Ramos's conviction and sentence.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Ramos's representation in this appeal have ended. Defense counsel need do no more than inform Ramos of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission

