

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



DIVISION ONE
FILED: 01/05/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0306
)
Appellee,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
GLENN ALAN WHITE,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-030546-001 SE

The Honorable Lisa M. Roberts, Judge *Pro Tempore*

AFFIRMED

Thomas C. Horne, 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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

J O H N S E N, Judge

¶1 This appeal was 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), following Glenn Alan White's conviction of cruelty to animals, a Class 1 misdemeanor. White's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). White was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm White's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶2 On New Year's Day 2010, the Maricopa County Sheriff's Office received a 911 call reporting a horse in distress at White's home in Tonopah.¹ Detective Michael Barnett of the animal crimes investigation unit responded to the scene. There Barnett found an emaciated horse lying motionless on its side. The detective noted that no food was available in the horse's pen and that the horse's water was well beyond its reach. Barnett spoke to White, who confirmed he owned the horse and said the horse had been down for three days.

¹ Upon review, we view the facts in the light most favorable to sustaining the verdict and resolve all inferences against White. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶13 The Sheriff's Office contacted an equine veterinarian to assess the horse's condition. The veterinarian observed that the horse was malnourished, dehydrated and unable to rise, even with assistance. Because the animal's condition was untreatable, the veterinarian euthanized the horse.

¶14 White was arrested and charged with cruelty to animals, a Class 6 felony. He later waived any right he might have had to a jury trial, and the State then moved to designate the charge a Class 1 misdemeanor. After a bench trial, the court found White guilty of cruelty to animals pursuant to Arizona Revised Statutes ("A.R.S.") section 13-2910(A)(8) (2011).² The court imposed a suspended sentence of two years' supervised probation with 30 days in jail.

¶15 White timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033 (2011).

DISCUSSION

¶16 The record reflects White received a fair trial. He was represented by counsel at all stages of the proceedings against him and was present at all critical stages. The court held appropriate pretrial hearings. It conducted an appropriate colloquy prior to finding White had knowingly, intelligently and

² Absent material revisions after the date of an alleged offense, we cite a statute's current version.

voluntarily waived his right to a jury trial. It did not conduct a voluntariness hearing; however, the record did not suggest a question about the voluntariness of White's statements to law enforcement. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶17 The State presented both direct and circumstantial evidence sufficient to allow the court to convict. The court received and considered a criminal history report and White's sentencing memorandum, addressed their contents during the sentencing hearing, permitted White to speak at the hearing and imposed a legal sentence for the crime of which White was convicted.

CONCLUSION

¶18 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶19 After the filing of this decision, defense counsel's obligations pertaining to White's representation in this appeal have ended. Defense counsel need do no more than inform White of the outcome of this appeal and his future options, 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). On the court's own motion, White has 30 days from the date of

this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. White has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/
PATRICIA A. OROZCO, Judge

/s/
LAWRENCE F. WINTHROP, Judge