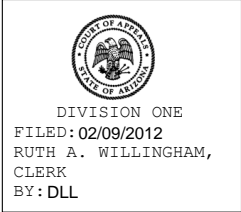


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0312
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
WILLIAM RAY WILLIAMS,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-133502-001 DT

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

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 Christopher V. Johns, Deputy Public Defender
Attorney for Appellant

D O W N I E, Judge

¶1 William Ray Williams appeals his conviction for taking the identity of another in violation of Arizona Revised Statutes ("A.R.S.") section 13-2008. Pursuant to *Anders v. California*,

386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Williams did not file a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶12 In February 2009, Williams cashed a \$2000 check ("check 1295") made out to him and drawn on H.L.'s bank account. Because Williams was "a non-customer," the bank required him to place his fingerprint on the check. Williams also presented his driver's license, and the bank recorded the license number as part of the transaction.

¶13 A few days later, H.L. tried to withdraw money from her account, but was informed it was "way overdrawn" because of check 1295. H.L. stated she did not write that check and that check number 1295 was still in her checkbook. The bank's financial crimes investigator reviewed H.L.'s account and saw that check 1295 had H.L.'s identifying information and account number on it, but it was physically different from other checks processed through H.L.'s account and was for a much higher

amount than normal. Detective Miaso matched the driver's license number provided by the bank to Williams. The detective also matched a "law enforcement data base[]" photo of Williams to photographs of the transaction taken at the bank.

¶14 When Detective Miaso questioned Williams, he "immediately" said he was "a hundred percent wrong in cashing" the check, but said he "had penalties and that's why he cashed it." Williams apologized and offered to pay back the funds. He explained the check came from an "online job opportunity," whereby "someone in Russia" provided the check and Williams sent money back after cashing it.

¶15 Williams was indicted for taking the identity of another ("count 1") and forgery ("count 2"), both class 4 felonies. He failed to appear for the first day of trial and was tried in absentia. Detective Miaso, the bank's fraud investigator, and H.L. testified for the prosecution. At the conclusion of the State's case, defense counsel moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure, which the court denied. The defense offered no evidence. The jury found Williams guilty of count 1 but acquitted him of forgery.

¶16 Williams appeared at sentencing and admitted one prior felony in return for the State's agreement not to allege two other convictions for sentence enhancement purposes. The court

sentenced Williams to a presumptive term of 2.5 years' incarceration, with 88 days of pre-sentence incarceration credit.

DISCUSSION

¶17 We have read and considered the briefs submitted by defense counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was represented by counsel during all critical phases of the proceedings. He had notice of the trial date. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶18 A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citation omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction."

State v. Soto-Fong, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶9 The State presented substantial evidence that Williams knowingly possessed H.L.'s personal identifying information without her consent and with the intent to use it for an "unlawful purpose or to cause loss." See Ariz. Rev. Stat. ("A.R.S.") § 13-2008(A); see also A.R.S. § 13-2001(10) (personal identifying information includes a person's name, residence or mailing address, or checking account number). Check 1295 contained H.L.'s name, address, checking account number, and purported signature. H.L. testified she did not know Williams or give him permission to have her information or sign her name. Detective Miaso testified that Williams said he was "sorry" and offered to pay back the money when questioned about the check.

¶10 The requisite mental state could be inferred from the totality of circumstances surrounding the check. See *State v. Edgar*, 126 Ariz. 206, 209, 613 P.2d 1262, 1265 (1980) ("It is well settled that criminal intent may be proved by circumstantial evidence") (citation omitted). Williams told Detective Miaso it was his "job" to cash checks, but he communicated with his alleged employer, "the Russians," only by e-mail. Although check 1295 was allegedly provided by the "Russians," it was written on a personal checking account of an unknown Arizona resident and negotiated at an Arizona bank.

Detective Miaso also testified Williams said he tried to cash a second check, but the bank "wouldn't cash it."

CONCLUSION

¶11 We affirm Williams' conviction and sentence. Counsel's obligations pertaining to Williams' representation in this appeal have ended. Counsel need do nothing more than inform Williams of the status of the appeal and his future options, unless counsel's 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). On the court's own motion, Williams shall have 30 days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Chief Judge