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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: 04/24/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, )  
 ) No. 1 CA-CR 11-0509  
 )  
 ) DEPARTMENT B  
 Appellee, )  
 ) MEMORANDUM DECISION  
 v. )  
 ) (Not for Publication -  
 JAVIER CURIEL, ) Rule 111, Rules of the  
 ) Arizona Supreme Court)  
 Appellant. )  
 )  
 )

Appeal from the Superior Court in Yuma County

Cause No. S1400CR201100181

The Honorable Andrew W. Gould, Judge

**CONVICTIONS AND SENTENCES AFFIRMED**

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

Sharmila Roy Laveen  
Attorney for Appellant

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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 Javier Curiel's convictions of theft of means of transportation, a Class 3 felony, and theft, a Class 1 misdemeanor. Curiel'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). Curiel 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 Curiel's convictions and sentences.

#### FACTS AND PROCEDURAL HISTORY

¶2 In mid-January 2011, Curiel arranged with the victim to break down several old trucks and split the value of the resulting scrap metal.<sup>1</sup> When Curiel did not return, the victim hired others to do the work. Curiel arrived while the victim and the others were at work cutting the metal. The victim told Curiel that the deal was off because of Curiel's delay, that he already had hired a replacement for Curiel and that Curiel would not share the proceeds from the scrap metal. Curiel then left,

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<sup>1</sup> Upon review, we view the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Curiel. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

only to return a short time later with two others. He exited his truck, walked directly to the victim's truck, got in and drove away.

¶13 Curiel was arrested seven days later. He told the arresting officer "that he knew where the [victim's] vehicle was but wasn't going to say and that the reason why they took the vehicle was because [the victim] doesn't pay his employees." The victim's truck eventually was recovered, but the victim's tool box and tools that had been in the truck were never found.

¶14 Curiel was charged with theft of means of transportation and theft of the tool box. At trial, the jury found Curiel guilty of both counts as charged. After a mitigation hearing, the court sentenced Curiel to the presumptive term of three and one half years for theft of means of transportation, to run concurrently with a six-month sentence for theft, with 170 days' presentence incarceration credit.

¶15 Curiel timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031 and -4033 (West 2012).<sup>2</sup>

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

## DISCUSSION

¶16 The record reflects Curiel 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 did not conduct a voluntariness hearing; however, the record does not suggest a question about the voluntariness of Curiel's statements to police. 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 jury to convict. The jury was properly comprised of eight members. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report, addressed its contents during the sentencing hearing and imposed legal sentences for the crimes of which Curiel 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 Curiel's representation in this appeal have ended. Defense counsel need do no more than inform Curiel 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, Curiel has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Curiel 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/  
DONN KESSLER, Judge

/s/  
LAWRENCE F. WINTHROP, Chief Judge