

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: 05/15/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0643
)
Appellee,) DEPARTMENT E
)
v.) MEMORANDUM DECISION
)
JEFFREY JAMES MCALPIN,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-125039-001

The Honorable Janet E. Barton, Judge

AFFIRMED

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

Maricopa County Public Defender's Office Phoenix
By Thomas K. Baird, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Jeffrey McAlpin appeals from his convictions and

sentences for one count of possession or use of narcotic drugs—heroin (a class 4 felony), one count of possession or use of dangerous drugs—methamphetamine (a class 4 felony), and one count of possession or use of marijuana (a class 6 felony). McAlpin’s counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. McAlpin was afforded the opportunity to file a *pro se* supplemental brief but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 “We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions.” *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001).

¶3 On May 14, 2010, Phoenix Police officers served a narcotics search warrant on McAlpin’s residence. The search warrant was based on information about Bryan W.’s drug dealing activity from the McAlpin home. McAlpin was at home when the search warrant was served. After being advised of his *Miranda*¹ rights, McAlpin agreed to speak to Detective K.

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶14 According to Detective K.'s testimony, McAlpin admitted the following during questioning: he was the owner of the residence; he was a user of heroin and occasionally methamphetamine; he bought his drugs from his roommate Bryan W.; he admitted to owning a house safe located in a common area of the home; he provided the combination of the safe to the officers; and he stated that the officers would find some heroin and some methamphetamine inside the safe.

¶15 After opening the safe, the officers found a small black container with a baggie of marijuana inside. On the inside floor of the safe, the officers found one syringe containing a dark brown fluid believed to be heroin; two types of scales; and a zip-lock baggie in one of the scales containing a substance believed to be methamphetamine.

¶16 The officers also found other objects inside the safe including keys to a BMW that fit the vehicle located in the driveway of the home and found to be McAlpin's mother's car, along with a set of wrist watches.

¶17 Erica B., a forensic scientist for the Phoenix Police Department, tested the contents of the syringe and the two baggies. She concluded that the syringe contained a usable amount of heroin. She further concluded that one baggie contained marijuana and the other contained a usable quantity of methamphetamine.

¶18 McAlpin testified at trial in his defense. He stated that he shared the safe with his roommate Bryan W. He testified that he used heroin; it was his "drug of choice." McAlpin also stated that he acquired the heroin from his roommate Bryan W. He further stated that he purchased the safe for the home to protect the cash he made from tips while working in the restaurant industry. Eventually, McAlpin allowed Bryan W. to use the bottom portion of the safe while he used the compartmentalized and lockable top portion.

¶19 McAlpin testified about the conversation he had with Detective K. on the day of his arrest. Contrary to Detective K.'s version of events, McAlpin averred that he told the detective that "he **could** find heroin, cocaine, speed, marijuana, and pills, the drugs that [he] knew Bryan [W.] was selling." (Emphasis added). McAlpin clarified that he told the detective that he "might" or "could" and not that he was "going" to find drugs in the safe.

¶10 After all evidence and argument was presented, the jury found McAlpin guilty of all three charges. The trial judge sentenced McAlpin to presumptive concurrent terms of 2.5 years for the possession of heroin and methamphetamine, and 1 year for the possession of marijuana.

¶11 McAlpin timely appeals, and we have jurisdiction pursuant to Arizona Constitution Article 6, Section 9, and

Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).²

DISCUSSION

¶12 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The evidence presented supports the convictions and the sentences imposed fall within the range permitted by law. As far as the record reveals, McAlpin was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶13 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform McAlpin of the disposition 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. McAlpin has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

² We cite to the current versions of statutes when no revisions material to this decision have occurred since the date of the alleged offenses.

CONCLUSION

¶14 The convictions and sentences are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICIA A. OROZCO, Presiding Judge

_____/s/_____
PHILIP HALL, Judge