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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. WILLIE ALBERT ROSS, Appellant.	)	2 CA-CR 2011-0167 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF COCHISE COUNTY

Cause No. CR201000477

Honorable James L. Conlogue, Judge

AFFIRMED

Peter A. Kelly
Palominas
Attorney for Appellant

E S P I N O S A, Judge.

¶1 Following a jury trial, appellant Willie Ross was convicted of failure to register as a sex offender for not informing the sheriff of his new address pursuant to A.R.S. § 13-3822(A). After finding Ross had two historical prior felony convictions and was a category three repetitive offender, the trial court sentenced him to a presumptive, ten-year prison term. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Although

counsel has not asserted he has reviewed the record and found no arguable issue to raise on appeal, because he has submitted the opening brief in accordance with *Anders* without having raised any issues, we can infer that is the case and that he is asking this court to search the record for fundamental error. Ross has filed a supplemental brief. For the reasons set forth below, we affirm.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury's finding of guilt. *See State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). And, the term of imprisonment is authorized by law. The evidence presented at trial showed that Ross had been informed of and had acknowledged he understood the registration requirements of Arizona's sex offender registration laws as set forth in § 13-3822(A). Convicted sex offenders like Ross who are subject to that statute must notify the sheriff's office within seventy-two hours of a change of residence and, if the individual is homeless, he "shall register as a transient not less than every ninety days with the sheriff in whose jurisdiction the transient is physically present." § 13-3822(A).

¶3 In July 2008, Ross reported he was residing at the residence of his ex-wife, Vivian Reed, in Sierra Vista. However, Ross did not file any other notification of residence change until May 2010, when he reported he was living at a motel in Sierra Vista. Reed testified that Ross stopped living at her home in September 2009, although he still received mail at her residence and visited on occasion after he moved out. Reed was unaware whether Ross ever slept in a storage shed on her property after he moved out of the house in September 2009. Reed's daughter testified that Ross lived with Reed

from June through September 2009. She also testified that early one morning in October 2009, she had seen him near the storage shed on her mother's property, a structure she described as "rotted out" and lacking water or lights.

¶4 Without citation to the record,[1] counsel asserts in the opening brief that Ross, who did not testify at trial, "did not contest the fact that he had not notified the sheriff of any change in his residence [from Reed's home], rather he had asserted a claim that he continued to reside there in a vehicle or storage shed." Ross asserts this same argument on appeal.

¶5 In his sixty-one page supplemental brief, approximately half of which contains quotes of testimony from the trial, Ross asserts numerous arguments, none of which has merit. As to the quoted portions of the trial testimony, Ross has included in the margins what appear to be his comments and criticisms of that testimony. To the extent he intended this court to treat those comments as arguments on appeal, we decline to do so. We are unable to discern what arguments Ross may have intended to assert, nor has he presented any such arguments in a manner that comports with Rule 31.13(c)(1)(vi), Ariz. R. Crim. P.

¶6 To the extent we understand Ross's other arguments, and to the extent we can address them, we do so.[2] However, we reject the following arguments because Ross

[1]The opening statements and closing arguments apparently were not transcribed, and thus are not part of the record on appeal.

[2]We are unable to address some of Ross's arguments because we do not understand them. For example, Ross argues: "Josh Nocola misspoken conflicting testimony and misquoted insinuations of telephone calls dates and times an [sic]

has asserted them without legal support or citation to the record: "the voir dire question caused a biased jury"; "the [sex offender] registry leads to public retaliation and, therefore has a punitive effect"; "pre-trial publicity necessitated a change of venue or [required the trial court to] hire an ASU professor to conduct a telephone survey of registered voters in Cochise County in order to ascertain the degree of saturation of pretrial publicity"; "foreperson Joan Davenport was acknowledge [sic] to have known and worked with witness Vivian Reid"; and the trial court failed to grant Ross's "motion for disclosure of impeaching information." Additionally, to the extent Ross intended to raise claims of ineffective assistance of counsel, such claims may not be raised on direct appeal. *See State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002) ("[I]neffective assistance of counsel claims are to be brought in Rule 32[, Ariz. R. Crim. P.,] proceedings. Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of merit.").

¶7 We also reject Ross's request that we consolidate this matter with criminal convictions from other matters he now wishes to challenge on appeal. The only matter properly before us is the matter raised in the notice of appeal, which is limited to Ross's conviction for failure to register as a sex offender. Additionally, to the extent Ross makes arguments explaining his whereabouts in 2010, this information is not relevant to the September 2009 time period charged in the indictment. Finally, we note that Ross

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conversations of Ms. Vivian Reid and Willie Ross an [sic] was uncorrected by Josh Nocola and Faisal Ullah about the technical difficulties of the cronological [sic] order to be played to the incompetent jury."

states in his supplemental brief that he was, in fact, homeless in September 2009, thus tending to confirm he had in fact failed to comply with the sex offender registration requirements of § 13-3822(A).

¶8 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found none. Accordingly, Ross's conviction and sentence are affirmed.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge