

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JOE BERNAL,
Appellant.

No. 2 CA-CR 2016-0207
Filed November 23, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.

NOT FOR PUBLICATION

See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pinal County
No. S1100CR201400048
The Honorable Joseph R. Georgini, Judge

AFFIRMED

COUNSEL

The Stavris Law Firm, PLLC, Scottsdale
By Alison Stavris and Christopher Stavris
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 After a jury trial, Joe Bernal was convicted of promoting prison contraband and sentenced to a 15.75-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), asserting she has reviewed the record but found no arguably meritorious issue to raise on appeal.¹ Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for error. Bernal has filed a supplemental brief in which he appears to question the accuracy of some trial evidence.

¶2 Viewing the evidence in the light most favorable to sustaining the jury’s verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports it here. In October 2013, while Bernal was incarcerated in an Arizona Department of Corrections facility, a corrections officer found a weapon concealed in Bernal’s shoe. *See* A.R.S. § 13-2505(A)(3), (G). In his pro se supplemental brief, Bernal makes a series of factual assertions, some of which arguably contradict trial evidence. But he identifies no record evidence supporting his statements, as required by Rule 31.13(c)(1)(vi), Ariz. R. Crim. P. And we will not consider on appeal evidence not first presented below. *State v. Carter*, 216

¹Bernal’s first appeal was dismissed as untimely. He was then permitted to file a delayed appeal pursuant to Rule 32.1, Ariz. R. Crim. P.

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Ariz. 286, ¶ 24, 165 P.3d 687, 692 (App. 2007). Finally, the record supported the trial court's finding that Bernal had two historical felony convictions. His sentence is within the statutory range and was properly imposed. *See* A.R.S. §§ 13-703(C), (J), 13-2505(G).

¶3 Pursuant to our obligation under *Anders*, we have searched the record for fundamental error and found none. *See State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985). We therefore affirm Bernal's conviction and sentence.