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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: 06/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0247
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
SEBASTIAN PENA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-006224-007DT

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

James J. Haas, Maricopa County Public Defender Phoenix
By Stephen R. Collins
Attorneys for Appellant

G O U L D, Judge

¶1 Sebastian Pena appeals from his conviction and resulting sentences of one count of trafficking in stolen property.

¶2 Pena's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising this Court that after a search of the entire appellate record, he found no arguable question of law that was not frivolous. Pena was afforded the opportunity to file a supplemental brief in propria persona; however, he did not do so within the time limit and we will only consider the record and counsel's opening brief on appeal.

¶3 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). 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) (2003), 13-4031 and -4033(A)(1) (2010).¹ Finding no reversible error, we affirm.

Facts and Procedural History

¶4 Victim drove his 1992 Chevy Silverado truck over to Pena's house to hang out and drink beer. Victim parked the truck on the front lawn and left the keys in the ignition so that he could play music from the truck's stereo. After a couple of hours, Pena jumped in Victim's truck, turned it on,

¹ Unless otherwise specified, we cite to the current version of the applicable statutes because no revisions material to this decision have occurred.

and drove off. Pena did not have permission to drive the truck; when he did not return, Victim called the police and reported the truck stolen.

¶5 The next day, an undercover detective received a call from an individual named Michael seeking to sell a stolen truck. The detective arranged to meet Michael to buy the vehicle. The undercover detective arrived at the location and spoke with Michael and Pena regarding Victim's truck; during their conversation Pena told the detective the truck was "hot" and had been reported stolen. The detective negotiated with Pena and Michael and eventually purchased the truck for \$400. The entire transaction was recorded on videotape.

¶6 Pena was charged with one count of trafficking in stolen property and one count of theft of means of transportation. Pena was present and represented by counsel throughout the pre-trial stages; however, when he did not appear on the first day of trial, he was tried in absentia. At trial, the State presented the videotaped transaction showing Pena's participation in selling the truck in addition to the testimony of Victim and the undercover detective. The jury found Pena guilty of trafficking in stolen property and not guilty of theft of means of transportation.

¶7 At sentencing, the court held a trial on Pena's priors. The State alleged, and the court found, that Pena had

two historical priors. The court also found that Pena was currently on probation for an offense he committed in 2009, and he violated his probation by committing the offense of trafficking in stolen property. Accordingly, the court revoked Pena's probation and sentenced him to a super mitigated term of four months for the 2009 offense. Consecutive to this sentence, the court sentenced Pena to the presumptive term of eleven and a quarter years for the conviction of trafficking in stolen property. Pena timely appealed.

Conclusion

¶8 We have read and considered counsel's brief, carefully searched the entire record for reversible error and found none. *Clark*, 196 Ariz. at 541, ¶ 49, 2 P.3d at 100. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and substantial evidence supported the finding of guilt. Pena was represented by counsel at all critical stages of the proceedings. At sentencing, Pena and his counsel were given an opportunity to speak and the court imposed a legal sentence.

¶9 Counsel's obligations pertaining to Pena's representation in this appeal have ended. Counsel need do nothing more than inform Pena 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). Pena shall have thirty days from the date of this decision to proceed, if he so desires, with an in propria persona motion for reconsideration or petition for review.²

/S/

ANDREW W. GOULD, Judge

CONCURRING:

/S/

MAURICE PORTLEY, Presiding Judge

/S/

ANN A. SCOTT TIMMER, Judge

² Pursuant to Arizona Rule of Criminal Procedure 31.18(b), Defendant or his counsel has fifteen days to file a motion for reconsideration. On the Court's own motion, we extend the time to file such a motion to thirty days from the date of this decision.