DIVISION ONE
FILED: 07/10/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 11-0636
	)	
Appellee,	)	DEPARTMENT S
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
MICHAEL WAYNE JORDAN,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2003-009568-001

The Honorable Robert L. Gottsfield, Judge

AFFIRMED

Thomas C. Horne, Arizona 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 Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Chief Judge

¶1 Michael Wayne Jordan ("Appellant") appeals his conviction and sentence for forgery. Appellant's counsel has filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259

(2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that she has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so. He has, however, raised three issues through counsel that we address.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (West 2012),[1] 13-4031, and 13-4033(A). Finding no reversible error, we affirm.

I. FACTS AND PROCEDURAL HISTORY[2]

¶3 On January 14, 2004, the State charged Appellant by information with one count of forgery, a class four felony, in violation of A.R.S. § 13-2002. In pertinent part, the State

[1] We cite the current Westlaw version of the applicable statutes because no revisions material to this decision have since occurred.

[2] We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

alleged that Appellant "with intent to defraud, offered or presented to M & I Bank and/or [the bank teller], a forged instrument or one which contained false information, to-wit: check #221 account of [D.M.] in the amount of $550.00." The State later alleged that Appellant had one historical prior felony conviction and had committed the charged offense while on probation for the prior offense. *See* A.R.S. § 13-708(C).

¶4 At trial, the State presented the following evidence: On September 23, 2002, thieves broke into D.M.'s home and stole several items, including several personal checks. On September 30, 2002, Appellant entered the M&I Bank and presented a check written on D.M.'s account to the bank teller. The teller was alerted to a possible forgery by several abnormalities on the check: the amount had been changed, and a driver's license number and fingerprint were already on the check. Appellant claimed that he tried to cash the check the day before without success because it was postdated, and he had been instructed to bring the check back. The teller looked up the account in the bank system, noticed it had been "flagged" because the checks on the account had been reported stolen, and asked Appellant to wait while she verified the check. She then notified her supervisor to call the police.

¶5 Meanwhile, Appellant walked outside to speak with someone waiting in a car, and then came back inside the bank.

When a police officer arrived, Appellant told the officer he had laid tile at D.M.'s home, and D.M. paid him with the check. Appellant explained that he had attempted to cash the check on September 25, but because the check was postdated September 27, the bank had refused to cash the check, and he had to wait at least two days before again attempting to cash the check. The police officer arrested Appellant and transported him to jail.

¶6 At the jail, Detective McMahan advised Appellant of his rights pursuant to *Miranda*[3] and interrogated Appellant. Appellant acknowledged that he understood his rights as read to him, and the detective noted that Appellant did not appear drugged or intoxicated. Appellant reaffirmed his story that he told the police officer at the bank: he met D.M. on September 16 to survey the tile job; they met at Home Depot to buy supplies the next day; and he worked on the tiling for the next few days. He indicated that D.M. paid him at the end of the job, and he tried but could not cash the check on September 25 because it was postdated.[4]

¶7 Approximately two hours later, Detective McMahan interviewed Appellant again. Appellant presented a new story, indicating that he had received the check earlier that morning

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[3] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

[4] D.M. testified at trial that he had never met Appellant and had not hired or paid anyone to do tile work at his home.

from a man named “Dave,” a friend of an acquaintance. Dave said that he would give half the amount of the check to Appellant if the latter cashed the check for him. Appellant claimed Dave had informed him that the latter could not cash the check because Dave had already withdrawn all the money he could that day. Appellant also admitted to the detective that he had been at a different bank attempting to cash the check that morning as well.

¶8 Appellant testified at trial and admitted having been previously convicted of a felony. Next, he testified that his friend “Jerry” introduced him to a guy who called himself “Dave” to do tile work. Dave wrote Appellant a check for $750, and told Appellant to cash the check and bring half of the money to meet him at Home Depot later that day. Jerry drove Appellant to a gas station, where Appellant looked up the address of a nearby M&I Bank in a phone book. The bank teller asked Appellant to provide his Arizona I.D. number and a thumbprint, and he obliged, but was unable to cash the check because there was not enough money in the account.

¶9 Jerry took the check back to Dave, and a few hours later, Jerry returned with the check. The amount had been changed from $750 to $550, and Jerry explained that Dave had forgotten he only had $600 in the account. Despite Appellant’s doubts about the altered check, he agreed to have Jerry drive

him to another bank, where he tried to cash the check — again without success. This time, police arrived, and an officer asked Appellant about the check, arrested him, searched Jerry's car, and drove Appellant to the station where he was interrogated by Detective McMahan. Appellant testified that, during questioning, he initially told the detective that he had been paid for some work he had done because he was "scared to death" about the "serious accusations against [him]," and he needed to come up with a plausible reason for having the check. Appellant further testified that when he was interrogated again later that evening, however, he revealed the whole truth about the check's origins. He denied advising the bank teller that he had tried to cash the check a few days earlier, and he denied informing Detective McMahan that Dave handed the check to him that morning with the agreement that Appellant would receive half the proceeds if he cashed it because Dave had used his allotted number of withdrawals.

¶10 The jury found Appellant guilty as charged and that he committed the forgery while he was on probation. After determining the State had proven the existence of the alleged historical prior felony conviction, the trial court sentenced Appellant to the presumptive term of 4.5 years' imprisonment in the Arizona Department of Corrections. The court also credited

Appellant for 37 days of presentence incarceration. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶11 Appellant raises three issues on appeal. Appellant first argues that the jury was not composed of his peers. We have reviewed the entire record, including jury voir dire, and find no error, much less fundamental, reversible error. The record provides no indication that a biased juror was selected or that anyone was systematically excluded from the jury panel. Furthermore, Appellant is not entitled "to a perfect jury panel empaneled through a perfect system, as such is not possible"; instead, he is entitled to a jury composed of members of the community. *State v. Taylor*, 112 Ariz. 68, 79, 537 P.2d 938, 949 (1975); *see also State v. Kabinto*, 106 Ariz. 575, 576, 480 P.2d 1, 2 (1971) (concluding that a Navajo Indian defendant was not denied equal protection when tried by a jury selected from a panel on which no Navajo Indians served).

¶12 Appellant next argues that there was insufficient evidence of the existence of a weapon for the jury to convict him of armed robbery. Even assuming there was insufficient evidence of the existence of a weapon, Appellant's argument does not advance his cause because the jury neither convicted him of armed robbery nor of robbery.

¶13 Appellant also argues that witnesses for the State were not credible because their testimony was inconsistent. Our review of the record reveals minimal inconsistencies among the State's witnesses. It does, however, indicate large discrepancies in Appellant's own testimony. Further, "[t]he credibility of witnesses is an issue of fact to be resolved by the jury; as long as there is substantial supporting evidence, [the court] will not disturb their determination." *State v. Harrison*, 111 Ariz. 508, 509, 533 P.2d 1143, 1144 (1975).

¶14 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶15 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v.*

Shattuck, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶16 Appellant's conviction and sentence are affirmed.

/S/
LAWRENCE F. WINTHROP, Chief Judge

CONCURRING:

/S/
JON W. THOMPSON, Judge

/S/
SAMUEL A. THUMMA, Judge