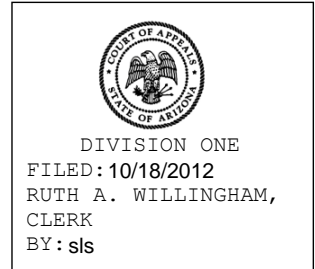


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0885  
)  
Appellee, ) DEPARTMENT E  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication - Rule  
KARYN JOY HERRERA, ) 111, Rules of the Arizona  
) Supreme Court)  
Appellant. )  
)

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Appeal from the Superior Court in Maricopa County

Cause No. CR 2011-005678-001

The Honorable Cari A. Harrison, Judge

**AFFIRMED AS CORRECTED**

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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 Stephen R. Collins, Deputy Public Defender  
Attorneys for Appellant

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N O R R I S, Judge

¶1 Karyn Joy Herrera timely appeals from her convictions and sentences for three counts of theft and one count of fraudulent schemes and artifices. See Ariz. Rev. Stat. ("A.R.S.") §§ 13-1802(A)(2) (2008), -2310(A) (2008). After

searching the record on appeal and finding no arguable question of law that was not frivolous, Herrera's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Herrera to file a supplemental brief *in propria persona*, but she did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Herrera's convictions and sentences as corrected.

#### **FACTS AND PROCEDURAL BACKGROUND<sup>1</sup>**

¶2 In 2007, Herrera volunteered as treasurer for the Parent Teacher Student Association ("PTSA") at her children's school. Herrera served as the treasurer for two school years until June 30, 2009, when the PTSA elected new officers. When the new officers began to review the financial records Herrera had maintained as treasurer, they discovered Herrera had withdrawn from the PTSA bank account \$2,000 in cash on October 14, 2008; \$2,500 in cash on October 17, 2008; and \$2,000 in cash on October 21, 2008.

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<sup>1</sup>We view the facts in the light most favorable to sustaining the jury's verdict and resolve all reasonable inferences against Herrera. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

¶13 The new officers investigated and eventually determined that although no money was actually missing, Herrera had not returned the monies she withdrew in October to the PTSA bank account until the end of her term in June 2009. Eventually, the new officers filed a police report, police investigated, and a grand jury indicted Herrera on the charges identified above. See *supra* ¶ 1.

¶14 At trial, the State presented evidence that instead of writing PTSA checks to "cash," which required two officer signatures, Herrera used bank withdrawal slips and withdrew cash from the PTSA bank account on October 14, 17, and 21. Minutes after withdrawing PTSA cash, she visited her own bank and deposited cash into her personal account. Specifically, on October 14, 2008, after withdrawing \$2,000 from the PTSA account, Herrera deposited \$1,000 in cash into her personal bank account. On October 17, 2008, after withdrawing \$2,500 from the PTSA account, Herrera deposited \$2,500 in cash into her personal bank account. On October 21, 2008, after withdrawing \$2,000 from the PTSA account, Herrera deposited \$1,000 in cash into her personal bank account.

¶15 The State also presented evidence Herrera and her family was experiencing financial difficulties from October 2008 through June 2009. For example, the State presented evidence Herrera's bank had charged her significant insufficient funds

fees before she deposited the cash in October and, as a result of those deposits, the insufficient fund fees decreased. The State also presented evidence that at the end of Herrera's term as treasurer, she deposited over \$7,000 in cash into the PTSA account, effectively returning the cash she withdrew in October. Further, although disputed by Herrera, the State presented evidence Herrera had retained the cash even though the PTSA had no events in October that would have required so much cash.

¶16 Herrera testified at trial that she withdrew the cash to use for events the PTSA had scheduled for October and to make change at these events. Herrera explained she withdrew the cash and retained it until the end of her term as treasurer because she did not know the events scheduled for October had been rescheduled and then cancelled, and thus, was unaware she did not need the cash. Although Herrera testified she had not commingled the PTSA money with her own, the jury was free to discount her testimony. See *State v. Hernandez*, 191 Ariz. 553, 557, ¶ 11, 959 P.2d 810, 814 (App. 1998) (jury determines credibility of testimony).

¶17 A jury convicted Herrera as charged. The court sentenced Herrera to a mitigated jail term of 57 days with 28 days of presentence incarceration credit and one year of probation on each count to run concurrently.

## DISCUSSION

¶18 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Herrera received a fair trial. She was represented by counsel at all stages of the proceedings and was present at all critical stages.

¶19 The evidence presented at trial was substantial and supports the verdicts. The jury was properly comprised of eight members and the court properly instructed the jury on the elements of the charges, Herrera's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report, Herrera spoke at sentencing, and the court imposed sentences within the range of acceptable sentences for her offenses.<sup>2</sup>

## CONCLUSION

¶10 We decline to order briefing and for the reasons discussed above, we affirm Herrera's convictions and sentences as corrected.

¶11 After the filing of this decision, defense counsel's obligations pertaining to Herrera's representation in this

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<sup>2</sup>The sentencing minute entry incorrectly stated Herrera had been convicted of Count 2, a class five repetitive felony. We correct the minute entry to reflect Count 2 is a non-repetitive felony.

