

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,) No. 1 CA-CR 11-0907
) 1 CA-CR 11-0910
Appellee,) (Consolidated)
)
v.) DEPARTMENT A
)
RONALD C. CAHO,) **MEMORANDUM DECISION**
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
) **FILED 1/22/2013**
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2004-010722-001 DT
CR2010-132548-001 DT

The Honorable Lisa Ann VandenBerg, Judge *Pro Tem*

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 Jeffrey L. Force, Deputy Public Defender
Attorney for Appellant

Ronald C. Caho, Phoenix
Appellant

D O W N I E, Judge

¶1 Ronald C. Caho appeals his conviction for misconduct involving weapons in violation of Arizona Revised Statutes ("A.R.S.") section 13-3102(A)(4), as well as the disposition of his probation violation.¹ Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asked that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Caho filed a supplemental brief *in propria persona*, which we have considered.

FACTS AND PROCEDURAL HISTORY

¶1 On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982). Scottsdale police officers arrested Caho at a convenience store on a probation violation warrant. Caho was driving on a suspended license and was not the registered owner of the vehicle he was driving; officers impounded the vehicle

¹ The weapons charge and probation violation were given separate cause numbers in the superior court, but were later consolidated. Caho filed an identical notice of appeal in both matters, stating he is appealing from "entry of judgment and sentence imposed on December 21, 2011." On that date, the court issued two minute entries - one sentencing him on the weapons charge and the other disposing of the probation violation. We review both matters in this consolidated appeal.

and inventoried its contents. Inside a backpack on the back seat was a wooden box containing a .22 pistol and a loaded magazine.

¶12 Officers issued *Miranda* warnings and interviewed Caho at the police station. Caho stated he got the pistol from a friend, "disassembled it, [reassembled] it, and was going to be giving it back to that friend." Caho also admitted the backpack was his and that "he put the box with the gun in that backpack."

¶13 Caho was arraigned on the probation violation.² He was also charged with misconduct involving weapons, a class 4 felony, for knowingly possessing a handgun while being a prohibited possessor. Caho moved to suppress evidence found during the search of the vehicle. After an evidentiary hearing, the court denied the motion.

¶14 A jury trial ensued on the weapons charge. Police officers testified that Caho admitted assembling the gun, the backpack was his, and that he put the pistol in the backpack. A criminalist testified she found "a mixture of DNA profiles" on the pistol, but Caho's DNA was the "major contributor." Another criminalist testified that he tested the pistol, which "fired each time [he] pulled the trigger."

² The probation revocation petition alleged that Caho failed to report to his probation officer, pay restitution and fees, complete community service hours, or participate in counseling.

¶15 At the conclusion of the State's case-in-chief, Caho moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). He also argued the DNA evidence should be excluded because the State failed to prove that the buccal swab actually came from him. The court denied the motions. Caho stipulated that he was a prohibited possessor and that his civil rights had not been restored as of the date of his arrest.

¶16 The jury found Caho guilty. Caho's probation was automatically violated with entry of that verdict. See *State v. Flemming*, 184 Ariz. 110, 114-15, 907 P.2d 496, 500-01 (1995) (automatic violation of probation may be found when defendant is guilty of new crime). For sentencing purposes, Caho stipulated to two prior historical felonies used to enhance sentencing on the weapons conviction, in exchange for a more lenient sentencing recommendation from the State as to the probation matter. The court sentenced Caho to a 10-year presumptive term of imprisonment on the weapons charge, with 209 days' pre-sentence incarceration credit. The court followed the State's recommendation regarding the probation violation, sentencing Caho to four years' intensive probation upon his release from prison.³

³ But for "the unique circumstances" of the case and the stipulation waiving a trial on the priors, the Court stated it

DISCUSSION

¶7 We have read and considered the briefs submitted by Caho and his counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Defendant was present at all critical phases of the proceedings and was represented by counsel.⁴ The jury was properly impaneled and instructed. The jury instructions were consistent with the offense charged. The record reflects no irregularity in the deliberation process.

¶8 In his supplemental brief, Caho identifies several issues that we briefly address.⁵

¶9 Caho claims his counsel was ineffective, but all such claims must be brought in Rule 32 proceedings. "Any such claims improvidently raised in a direct appeal . . . will not be addressed by appellate courts regardless of merit." *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

would have sentenced Caho to a separate term of imprisonment on the probation violation.

⁴ After the case was submitted to the jury, Caho absconded and was not present for the verdict. He was later taken into custody on a bench warrant and was present at subsequent proceedings.

⁵ Because the record does not support them, we decline to address Caho's claims that he was not "able to litigate DNA, illegal search," and that officers stole impounded property and committed perjury.

¶10 In an apparent challenge to the sufficiency of the evidence, Caho notes in his supplemental brief that no fingerprints or DNA were found on the pistol box or the backpack. Indeed, the criminalist testified at trial that DNA tests were not conducted on those items. Law enforcement personnel were cross-examined about whether they could have inadvertently transferred Caho's DNA to the pistol during their search of the vehicle and Caho. One criminalist concluded "it would be very, very unlikely" because Caho was the "major contributor" of DNA on the pistol.

¶11 Appellate courts do not reweigh evidence to determine whether we would have found the defendant guilty; rather, we consider whether the verdict is supported by substantial evidence. *State v. Garfield*, 208 Ariz. 275, 277, ¶ 6, 92 P.3d 905, 907 (App. 2004) (citations omitted). Jurors in the case at bar heard evidence about the location of Caho's DNA. It was the jury's role to weigh the evidence, determine the credibility of witnesses, and reach a verdict based on evidence it deemed credible. See *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004) ("[T]he jury . . . weigh[s] the evidence and determine[s] the credibility of the witnesses.").

¶12 Caho also contends the State did not prove that he ever possessed the pistol. A person who knowingly possesses a deadly weapon while a prohibited possessor is guilty of

misconduct involving weapons. A.R.S. § 13-3102(A)(4); see also § 13-3101(A) (deadly weapon includes a firearm, which is any loaded or unloaded pistol "that will expel, is designed to expel or may readily be converted to expel a projectile by the action of an explosive," except for a pistol in a "permanently inoperable condition"). The definition of "possess" includes physical and constructive possession. A.R.S. § 13-105(34); see also *State v. Villavicencio*, 108 Ariz. 518, 520, 502 P.2d 1337, 1339 (1972) (constructive possession exists when the property "is found in a place under [the defendant's] dominion and control and under circumstances from which it can be reasonably inferred that the defendant had actual knowledge" of its existence). "Circumstantial evidence is acceptable in proving constructive possession" *State v. Villalobos Alvarez*, 155 Ariz. 244, 245, 745 P.2d 991, 992 (App. 1987).

¶13 Caho admitted being a prohibited possessor. He drove the vehicle containing the backpack. An officer testified that Caho admitted assembling the pistol and placing it in the backpack. A criminalist testified the pistol was operational. Based on this evidence, reasonable jurors could conclude that Caho possessed the pistol and was guilty of misconduct involving weapons.

CONCLUSION

¶14 We affirm Caho's conviction and sentence, as well as the disposition of the probation violation. Counsel's obligations pertaining to Caho's representation in this appeal have ended. Counsel need do nothing more than inform Caho 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). On the court's own motion, Caho shall have 30 days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

JOHN C. GEMMILL, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Chief Judge