

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



DIVISION ONE
FILED: 09/11/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0006
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
BILLY W. PHILLIPS,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Mohave County

Cause No. S8015CR2011

The Honorable Steven F. Conn, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Jill L. Evans, Mohave County Appellant Defender Office Kingman
By Jill L. Evans, Mohave County Appellant Defender
Attorneys for Appellant

N O R R I S, Judge

¶1 Billy W. Phillips timely appeals from his convictions and sentences for two counts of unlawful removal of theft detection devices. After searching the record on appeal and

finding no arguable question of law that was not frivolous, Phillips' 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 permitted Phillips to file a supplemental brief, but he did not do so. After reviewing the entire record, we find no fundamental error and, therefore, affirm Phillips' convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 On May 9, 2011, an employee of a retail store observed a man -- Phillips -- acting suspiciously in the electronics department. The employee reported what he had observed to another employee who reviewed a store surveillance video that showed Phillips unsuccessfully using a tool in an attempt to remove a theft detection device from a GPS unit. This employee also reviewed a surveillance video from the next day, May 10, 2011, which showed Phillips successfully removing the theft detection device from the GPS unit. The video showed Phillips placing it in his shopping basket, entering the store's

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

restroom, leaving the restroom, and then leaving the store. The store did not find the GPS unit in the restroom.

¶13 On May 12, 2011, Phillips returned to the store and store employees saw him take "something" and put it under his shirt. Phillips then entered a fitting room and, after Phillips left the fitting room, a store employee found a theft detection device, wrappings, and tags for a set of headphones. A store employee called police and police arrested Phillips as he was attempting to leave the store. A store employee ultimately located the headphones in a frozen food freezer. After a police officer advised Phillips of his *Miranda* rights,² Phillips identified himself in still photographs taken from the May 9th and 10th surveillance videos. Phillips told police he had hidden a gaming system behind some pillows in a different area of the store. He denied, however, cutting the antitheft device off the GPS unit and taking the headphones.

¶14 A jury convicted Phillips of both counts as charged. After the jury returned the verdicts, the court, based on testimony and evidence presented by the State, found Phillips had one historical prior felony conviction for purposes of sentence enhancement. The court sentenced Phillips to a slightly mitigated prison term of 1.5 years on each count with

²*Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

the sentences to run consecutively. See Ariz. Rev. Stat. ("A.R.S.") § 13-703(B)(2)(I) (Supp. 2011). The court gave Phillips 134 days of presentence incarceration credit.³

DISCUSSION

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

¶16 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, Phillips' 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, Phillips, through counsel, spoke at sentencing and the court imposed sentences within the range of acceptable sentences for his offenses.

³Although we note the superior court gave Phillips credit for one extra day of presentence incarceration credit, see *State v. Hamilton*, 153 Ariz. 244, 246, 735 P.2d 854, 856 (App. 1987) ("Where the date sentence is imposed serves, as here, as the first day of sentence . . . it does not also count for presentence credit"), we will not "correct sentencing errors that benefit a defendant, in the context of his own appeal, absent a proper appeal or cross-appeal by the state." *State v. Kinslow*, 165 Ariz. 503, 507, 799 P.2d 844, 848 (1990).

CONCLUSION

¶17 We decline to order briefing and affirm Phillips' convictions and sentences.

¶18 After the filing of this decision, defense counsel's obligations pertaining to Phillips' representation in this appeal have ended. Defense counsel need do no more than inform Phillips of the outcome of this appeal and his future options, unless, upon review, counsel finds 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).

¶19 Phillips has 30 days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Phillips 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/
PATRICIA K. NORRIS, Judge

CONCURRING:

/s/
ANN A. SCOTT TIMMER, Presiding Judge

/s/
DONN KESSLER, Judge