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See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 12/27/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 12-0037
)
) DEPARTMENT E
Appellee,)
) **MEMORANDUM DECISION**
)
v.)
) (Not for Publication -
ANDREW PETER BETRO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2011-110105-001 DT

The Honorable Dawn M. Bergin, Judge

AFFIRMED

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

Bruce Peterson, Office of the Legal Advocate Phoenix
By Colin F. Stearns, Deputy Legal Advocate
Attorneys for Appellant

J O H N S E N, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), following Andrew Peter Betro's

conviction of burglary in the second degree, a Class 3 felony. Ariz. Rev. Stat. ("A.R.S.") § 13-1507 (West 2012).¹ Betro's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Betro was given the opportunity to file a supplemental brief but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Betro's conviction and suspended sentence.

FACTS AND PROCEDURAL HISTORY

¶2 Betro agreed to help a friend, Paul Erickson, take two safes from the victim's home and sell their contents.² Betro and Erickson were friends with the victim's sons and in the past had been in the victim's home. At the scene, Erickson directed Betro to "keep [his] eyes open" and look for a white diesel truck owned by the victim; Betro complied and kept watch while Erickson removed the safes. They then met at Betro's home and opened the safes with hammers. They found several items inside,

¹ Absent material revisions after the date of an alleged offense, we cite a statute's current version.

² We review the facts in the light most favorable to sustaining the jury's verdicts and resolve all inferences against Betro. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998) (quotation omitted).

including a handgun and pieces of jewelry, which Betro took to hide at his parents' house so his wife did not discover them. When police eventually contacted Betro, he admitted his involvement in the burglary. A consensual search of his parents' home produced the handgun and jewelry the victim said were inside the safes.

¶13 Betro was charged with one count of burglary in the second degree. The State alleged he was criminally accountable as an accomplice by aiding, agreeing or attempting to aid, or providing means or opportunity for Erickson to commit the burglary. During trial, a redacted version of Betro's videotaped confession was played for the jury and admitted in evidence. Additionally, Betro testified that he agreed to get the safes and sell their contents, but that Erickson made him believe the items belonged to the victim's sons, who had given Erickson permission to sell them. Betro also testified, however, that he knew the safes themselves belonged to the victim.

¶14 The jury found Betro guilty as charged and found the existence of three aggravating circumstances. The court suspended imposition of sentence, placed Betro on supervised probation for three years and imposed a deferred jail term of six months. Betro also stipulated to paying \$400 in restitution.

¶15 Betro timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. sections 12-120.21(A)(1) (West 2012), 13-4031 (West 2012) and -4033(A)(1) (West 2012).

DISCUSSION

¶16 The record reflects Betro received a fair trial. He was represented by counsel and was present at all critical stages of the proceedings against him. The court held appropriate pretrial hearings. It did not conduct a voluntariness hearing; however, the record did not raise a question about the voluntariness of Betro's statements to police. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶17 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members with one alternate. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report, addressed its contents during the sentencing hearing and imposed a legal term of probation for

