IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

JERRY JOHNSON, JR., *Appellant*.

No. 1 CA-CR 13-0100

FILED 12-26-2013

Appeal from the Superior Court in Maricopa County
No. CR2012-130701
The Honorable Virginia L. Richter, Judge Pro Tempore

AFFIRMED AS CORRECTED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz

Counsel for Appellee

Maricopa County Public Defender's Office, Phoenix
By Charles R. Krull

Counsel for Appellant

MEMORANDUM DECISION

Judge Patricia K. Norris delivered the decision of the Court, in which Presiding Judge Peter B. Swann and Chief Judge Diane M. Johnsen joined.

N O R R I S, Judge:

¶1 Jerry Johnson, Jr. timely appeals from his conviction and sentence for disorderly conduct, a class 6 undesignated felony. After searching the record on appeal and finding no arguable question of law that was not frivolous, Johnson'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 Johnson to file a supplemental brief *in propria persona*, but he did not do so. After reviewing the entire record, we find no fundamental error and therefore affirm Johnson's conviction and sentence as corrected.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 Around 2:45 a.m. on June 10, 2012, two men were arguing outside of a restaurant.[2] During the course of the argument, Johnson uttered an expletive and removed a semi-automatic handgun from the waistband of his jeans. Although the barrel of the gun was pointed toward the ground, at least two people near Johnson observed the gun, were frightened, and notified police. Police arrived at the scene and arrested Johnson.

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

[2]It is unclear whether Johnson was actively involved in the argument. Johnson testified he was an associate of one of the men involved and took no part in the argument himself. Although one witness's testimony confirmed Johnson was merely an observer, another witness testified the man who pulled out the gun -- whom she identified at the scene as Johnson -- was one of the men involved in the argument.

¶3 A grand jury indicted Johnson on disorderly conduct, a class 6 dangerous felony. At trial, Johnson testified on his own behalf and admitted he "pulled [his] gun out and held it down to the side to pull [his] pants up." Nevertheless, the jury convicted Johnson of disorderly conduct but did not find the offense dangerous.

DISCUSSION

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

¶5 The evidence presented at trial was substantial and supports the verdict. The jury was properly comprised of eight members, and the court properly instructed the jury on the elements of the charge, Johnson'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, Johnson was given an opportunity to speak at sentencing, and his sentence was within the range of acceptable sentences for his offense.

¶6 We note, however, the superior court's sentencing minute entry erroneously referenced Arizona Revised Statutes ("A.R.S.") section 13-701 (Supp. 2013), a statute that deals with sentences of imprisonment and aggravating and mitigating factors for felony convictions. The State did not charge Johnson with any aggravating factors. Further, as reflected by the sentencing hearing transcript and minute entry, the court classified the offense as an undesignated class 6 felony. However, the minute entry makes no reference to A.R.S. § 13-604 (2010), the statute that deals with the designation of class 6 felonies. We therefore amend the superior court's sentencing minute entry to delete the erroneous reference to A.R.S. § 13-701 and to list A.R.S. § 13-604 as the appropriate sentencing statute.

CONCLUSION

¶7 We decline to order briefing and affirm Johnson's conviction and sentence as corrected.

¶8 After the filing of this decision, defense counsel's obligations pertaining to Johnson's representation in this appeal have ended. Defense counsel need do no more than inform Johnson 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).

¶9 Johnson 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 Johnson 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

Ruth A. Willingham · Clerk of the Court
FILED: gsh