

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

TED SAMUEL MINK, *Appellant*.

No. 1 CA-CR 16-0798
FILED 9-12-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-118327-001
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

AFFIRMED

COUNSEL

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

Maricopa County Legal Defender's Office, Phoenix
By Cynthia D. Beck
Counsel for Appellant

STATE v. MINK
Decision of the Court

MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge Margaret H. Downie and Chief Judge Samuel A. Thumma joined.

J O N E S, Judge:

¶1 Ted Mink appeals his conviction and sentence for one count of criminal trespass, a class two misdemeanor. After searching the entire record, Mink’s defense counsel has identified no arguable question of law that is not frivolous. Therefore, in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), defense counsel asks this Court to search the record for fundamental error. Mink was afforded an opportunity to file a supplemental brief *in propria persona* but did not do so. After reviewing the record, we find no error. Accordingly, Mink’s conviction and sentence is affirmed.

FACTS¹ AND PROCEDURAL HISTORY

¶2 In February 2013, the operations director for the Arizona Department of Transportation (ADOT) sent Mink a letter advising he was prohibited from entering certain, identified Arizona Motor Vehicle Division (MVD) offices. In a December 2013 follow-up letter, Mink was reminded he was only allowed to enter the Apache Junction MVD office and, if need be, a specific Tempe office for vehicle inspections. That letter further informed Mink that “[u]pon arrival at any other Motor Vehicle Division office in Arizona [he] w[ould] be subject to arrest and prosecution for Criminal Trespass” pursuant to Arizona Revised Statutes (A.R.S.) § 13-1503(A).² An ADOT detective and sergeant personally served Mink with the second letter in January 2014. At the time, Mink was given the “opportunity to read through both pages [of the letter].” The sergeant then

¹ “We view the facts in the light most favorable to sustaining the convictions with all reasonable inferences resolved against the defendant.” *State v. Harm*, 236 Ariz. 402, 404 n.2, ¶ 2 (App. 2015) (quoting *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

² Absent material changes from the relevant date, we cite a statute’s current version.

STATE v. MINK
Decision of the Court

“explained specifically . . . the instructions on the last page as to where [Mink] could or could not go.” The detective later testified Mink asked questions regarding the letter indicating he understood its contents.

¶3 In August 2014, Mink entered an MVD office in Mesa to renew a vehicle registration and submit a penalty fee waiver form. The Mesa MVD office was not a location Mink was authorized to enter, and, in June 2015, Mink was indicted on one count of criminal trespass in the second degree, a class two misdemeanor.³ See A.R.S. § 13-1503(B).

¶4 At trial, Mink admitted he conducted business at the Mesa MVD office — a location he was not authorized to enter. He testified, however, that he had been instructed to go to this location by the Mesa Police Department. Mink explained his car had been impounded by Mesa police after it was discovered his registration was invalid, and the police directed him to obtain a correct record of registration at that specific office in order to continue the vehicle release process.

¶5 At the conclusion of the one-day bench trial, Mink was convicted of criminal trespass in the second degree. The trial court sentenced Mink as a non-dangerous, non-repetitive offender to a term of two years’ probation. Mink timely appealed, and we have jurisdiction pursuant to A.R.S. § 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶6 Although Mink requested a jury trial, he received a bench trial. “Whether a defendant is entitled to a jury trial . . . is a question of law and is reviewed *de novo*.” *Stoudamire v. Simon*, 213 Ariz. 296, 297, ¶ 3 (App. 2006) (citing *Urs v. Maricopa Cty. Attorney’s Office*, 201 Ariz. 71, 72, ¶ 2 (App. 2001)). In determining jury eligibility for the trials of misdemeanor offenses, our supreme court directs a two-step inquiry into: (1) “whether a statutory offense has a common law antecedent that guaranteed a right to a trial by jury at the time of Arizona statehood,” and if not, (2) whether the penalty is otherwise sufficiently serious to require a jury trial. *Derendal v. Griffith*, 209 Ariz. 416, 425, ¶¶ 36-37 (2005) (citing Ariz. Const. art. 2, §§ 23-24).

³ Mink was also indicted on one count of forgery, but this count was dismissed without prejudice before trial.

STATE v. MINK
Decision of the Court

¶7 As to the first prong, this Court has held:

[The Arizona Constitution] does not guarantee the right to a jury trial for misdemeanor trespass because criminal trespass at common law had breach of the peace as an element of the offense, which the modern statutory offense does not require. . . . Since current Arizona law applies far more broadly than criminal trespass at the common law, and it reflects a serious policy shift in state law, common law criminal trespass is not an antecedent to modern criminal trespass, and no jury trial right attaches.

State v. Willis, 218 Ariz. 8, 11, ¶ 12 (App. 2008). As to the second prong, “[a]n offense with a maximum penalty of six months incarceration or less is presumptively petty, and not entitled to a jury trial.” *Id.* at 12, ¶ 14 (citing *Derendal*, 209 Ariz. at 422, ¶ 21; *Stoudamire*, 213 Ariz. at 298, ¶ 8; and then *Blanton v. City of N. Las Vegas*, 489 U.S. 538, 543 (1989)). Here, Mink was subject to a maximum sentence of four months incarceration. A.R.S. § 13-707(A)(2). Therefore, Mink was not entitled to a jury trial under either the common law or based upon the severity of the penalty.

¶8 Further review reveals no fundamental error. See *Leon*, 104 Ariz. at 300 (“An exhaustive search of the record has failed to produce any prejudicial error.”). “A person commits criminal trespass in the second degree by knowingly entering or remaining unlawfully in or on any nonresidential structure or in any fenced commercial yard.” A.R.S. § 13-1503(A). A person enters or remains unlawfully if he “enters or remains on premises when the person’s intent for so entering or remaining is not licensed, authorized or otherwise privileged.” A.R.S. § 13-1501(2). A nonresidential structure is “any structure other than a residential structure and includes a retail establishment.” A.R.S. § 13-1501(10). Here, the record provides sufficient evidence upon which a reasonable factfinder could determine Mink entered the Mesa MVD office, a nonresidential structure, knowing he was without privilege to do so. And even assuming Mesa police advised Mink to enter the Mesa MVD office, a premise the trial court was free to reject, see *State v. Jensen*, 217 Ariz. 345, 350, ¶ 12 (App. 2008) (“It is up to the factfinder to determine credibility issues.”) (citation omitted), the evidence supports a finding that Mink was on notice he would be arrested for criminal trespass if he entered an MVD office other than those specifically identified in the December 2013 correspondence from ADOT. Yet, Mink did not present any evidence suggesting the Mesa police knew he was prohibited from entering that MVD office; nor has he presented any legal authority suggesting his knowing, wrongful entry into the Mesa MVD

STATE v. MINK
Decision of the Court

office would have been justified by virtue of the instructions purportedly given by the Mesa police. Mink's ignorance of the law on this point is no excuse. *See, e.g., Alta Mining & Smelting Co. v. Benson Mining & Smelting Co.*, 2 Ariz. 362, 365 (Ariz. 1888).

¶9 The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Mink was represented by counsel at all stages and was present at all critical stages of the proceedings, including the entire trial and the verdict. *See, e.g., State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel) (citations omitted); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present). The verdict reflects the trial court judge was aware of the elements of the charged offense, the State's burden of proof, and Mink's presumed innocence. At sentencing, Mink was given an opportunity to speak, and the court stated on the record the evidence and materials it considered and the factors it found in imposing the sentence. *See* Ariz. R. Crim. P. 26.9, 26.10. Additionally, the sentence imposed was within the statutory limits. *See* A.R.S. § 13-707(A)(2).

CONCLUSION

¶10 Mink's conviction and sentence are affirmed.

¶11 Defense counsel's obligations pertaining to Mink's representation in this appeal have ended. Defense counsel need do no more than inform Mink of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate for submission to our supreme court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984); Ariz. R. Crim. P. 31.19 cmt.

¶12 Mink has thirty days from the date of this decision to proceed, if he wishes, with an *in propria persona* petition for review. *See* Ariz. R. Crim. P. 31.19(a). Upon the Court's own motion, we also grant Mink thirty days from the date of this decision to file an *in propria persona* motion for reconsideration.



AMY M. WOOD • Clerk of the Court
FILED: AA