

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

ROBERT STEVEN GALINDO, *Appellant*.

No. 1 CA-CR 17-0036
FILED 1-23-2018

Appeal from the Superior Court in Maricopa County
No. CR2014-161534-002
The Honorable Teresa A. Sanders, Judge

AFFIRMED

COUNSEL

Maricopa County Public Defender's Office, Phoenix
By Joel M. Glynn
Counsel for Appellant

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

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MEMORANDUM DECISION

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge Paul J. McMurdie and Judge Peter B. Swann joined.

M O R S E, Judge:

¶1 Robert Steven Galindo appeals his conviction and sentence for one count of burglary in the third degree, a class four felony. After searching the entire record, Galindo's defense counsel 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. Galindo was also allowed to file a supplemental brief in propria persona but did not do so. Finding no reversible error, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 On December 31, 2014, sheriff's deputies arrested Galindo and another individual next to an open storage unit owned by a golf-cart repair company.¹ The company was closed for the week between Christmas and New Year. In the open trunk of a car parked next to the storage unit, deputies found approximately \$500 to \$600 worth of the company's golf cart motors and parts that had been taken from the storage unit. Galindo and the other individual were both wearing gloves, and Galindo had a pair of wire cutters and a flashlight in his possession.

¶3 Galindo was previously employed at the golf-cart repair company but quit voluntarily in 2013. Galindo's brother worked as a manager at the company, but neither he nor the owner gave Galindo permission to enter or take anything from the storage unit.

¶4 Galindo elected not to testify at trial and acknowledged his decision on the record. The superior court instructed the jury on the presumption of innocence, the state's burden of proof, the elements of the

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).

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offense, and that guilt cannot be established solely by knowledge of, and mere presence at, the scene of the crime.

¶5 Galindo was warned of his right to be present at trial and that if he chose not to exercise that right, the case could proceed in his absence. Nevertheless, Galindo chose to absent himself from the trial after closing arguments were delivered. The jury found Galindo guilty as charged, the verdict was taken in Galindo's absence, and a warrant was issued for his arrest.

¶6 Galindo was arrested and sentencing was held in January, 2017. At sentencing, Galindo admitted that he had two prior felony convictions. The superior court ensured that Galindo understood the consequences of the prior convictions on his sentence, but advised Galindo that the state would be required to prove the prior convictions by a preponderance of the evidence. Prior to accepting Galindo's admission, the superior court admitted copies of minute entries and records from the Department of Corrections regarding the prior convictions.

¶7 Galindo's counsel requested a mitigated term and Galindo made a statement explaining that he left trial before the verdict because of his mother's declining health and a desire to spend time with her before going to prison. The superior court sentenced Galindo to the presumptive term of 10 years in the Department of Corrections with credit for 45 days of presentence incarceration.

DISCUSSION

¶8 Our review reveals no fundamental error. *See Leon*, 104 Ariz. at 300 ("An exhaustive search of the record has failed to produce any prejudicial error."). The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Galindo was present, with one exception, and represented by counsel at all critical stages of the proceedings. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages). Although Galindo was not present for the verdict, the court properly notified him of his right to be present and warned that the case would proceed in his absence. The superior court did not abuse its discretion in proceeding in absentia after Galindo voluntarily absented himself from the proceedings. Ariz. R. Crim. P. 9.1; *State v. Tudgay*, 128 Ariz. 1, 3 (1981).

¶9 The jury was properly comprised of eight jurors, and the record shows no evidence of juror misconduct. See A.R.S. § 21-102(B); Ariz.

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R. Crim. P. 18.1(a). The trial court properly instructed the jury on the elements of the charged offense, the State's burden of proof, and Galindo's presumption of innocence.

¶10 At sentencing, Galindo was given an opportunity to speak, and the court explained the basis for 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. § 13-703(J). Although the superior court incorrectly stated the burden of proof to establish the prior convictions, *State v. Cons*, 208 Ariz. 409, 415, ¶15 (App. 2004), because the sentencing court had copies of the prior conviction documents and corresponding records from the Department of Corrections, there is no prejudice to Galindo and no fundamental error. *See State v. Morales*, 215 Ariz. 59, 62, ¶ 11-13 (2007) (holding that an inadequate colloquy does not automatically invoke resentencing where documentary proof was sufficient to prove the prior convictions).

CONCLUSION

¶11 Galindo's conviction and sentence are affirmed. Defense counsel's obligations pertaining to Galindo's representation in this appeal have ended. Defense counsel need do no more than inform Galindo of the outcome of this appeal and his future options, unless, upon review, counsel finds an issue appropriate to submit to our supreme court for further review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984).

¶12 Galindo 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 Galindo thirty days from the date of this decision to file an *in propria persona* motion for reconsideration.



AMY M. WOOD • Clerk of the Court
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