

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

MARCUS ROSEAN COLTER, *Appellant*.

No. 1 CA-CR 17-0241
FILED 8-14-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-002692-001
The Honorable Christopher A. Coury, Judge

AFFIRMED

COUNSEL

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

Maricopa County Office of the Legal Advocate, Phoenix
By Frances J. Gray
Counsel for Appellant

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MEMORANDUM DECISION

Judge Kenton D. Jones delivered the decision of the Court, in which Presiding Judge James P. Beene and Judge Kent E. Cattani joined.

J O N E S, Judge:

¶1 Marcus Colter appeals his conviction and sentence for one count of burglary in the second degree, a class three felony. After searching the entire record, Colter’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 asked this Court to search the record for fundamental error. Colter was granted an opportunity to file a supplemental brief *in propria persona* and did not do so. After reviewing the entire record, we find no error. Accordingly, Colter’s conviction and sentence are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 One evening in March 2016, the victim’s neighbor, Angel V., was playing outside with his son when he saw a car driving slowly through the development with its lights off.¹ Angel saw the car park on the darkest part of the street and a person in dark clothing exit the car and climb over the wall into the victim’s backyard. Moments later, Angel heard a noise like glass shattering and called the police.

¶3 Soon thereafter, a police helicopter arrived and illuminated the area. Angel then watched as two men jumped back over the wall. The men tried to hide along the wall, but after the helicopter discovered them, they simply walked away from the victim’s home. A patrol officer apprehended Colter and another man, L.T., nearby.

¶4 Photographs introduced at trial show that the patio door and back porch light of the victim’s home were broken. A large river rock lay among the broken glass inside the door. Glass shards similar to those of

¹ “We view the facts in the light most favorable to sustaining the conviction[] 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)).

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the patio door were found in Colter's pocket and L.T.'s shoe. The inside of the home had been ransacked, and outside the home, a flat-screen television was propped against the exterior wall. Police also found a laptop computer, electronic picture frame, and a bottle of alcohol in the backyard. Shoe prints in the dirt in the backyard and around the wall matched the shoes worn by Colter and L.T.

¶5 After a four-day jury trial and unsuccessful motion for judgment of acquittal, the jury convicted Colter of burglary in the second degree. In a separate aggravation hearing, the State proved Colter had three historical felony convictions and the following aggravating factors applied: (1) the offense involved the presence of an accomplice; (2) Colter committed the offense as consideration for the receipt of, or in the expectation of the receipt of, anything of pecuniary value; and (3) the offense caused physical, emotional, or financial harm to the victim. At sentencing, the trial court found that Colter's acceptance of responsibility and guilty plea in a concurrent case were sufficient to warrant not imposing an aggravated sentence, and sentenced him as a non-dangerous, repetitive offender to the presumptive sentence of 11.25 years' imprisonment. The court credited Colter with 362 days' presentence incarceration. Colter timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) §§ 12-120.21(A)(1),² 13-4031, and -4033(A)(1).

DISCUSSION

¶6 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."). A person is guilty of burglary in the second degree, "by entering or remaining unlawfully in or on a residential structure with the intent to commit any theft or any felony therein." A.R.S. § 13-1507(A). The record contains sufficient evidence from which the jury could determine beyond a reasonable doubt Colter was one of two people who entered the victim's home for the purpose of stealing personal property and was therefore guilty of the charged offense.

¶7 All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Colter was represented by counsel at all stages of the proceedings and was present at all critical stages including the entire trial and verdict. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages) (citations

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

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omitted); *State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages). The jury was properly comprised of eight jurors, and the record shows no evidence of jury misconduct. See A.R.S. § 21-102(B); Ariz. R. Crim. P. 18.1(a). The trial court properly instructed the jury on the elements of the charged offenses, the State's burden of proof, and Colter's presumption of innocence. At sentencing, Colter was given an opportunity to speak, and the court stated on the record the evidence and materials it considered and 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. § 13-703(J).

CONCLUSION

¶8 Colter's conviction and sentence are affirmed.

¶9 Defense counsel's obligations pertaining to Colter's representation in this appeal have ended. Defense counsel need do no more than inform Colter 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).

¶10 Colter 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. 31.21. Upon the Court's own motion, we also grant Colter 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