

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

SUZANNE KAY ROSS, *Appellant*.

No. 1 CA-CR 17-0360  
FILED 1-25-2018

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Appeal from the Superior Court in Mohave County  
No. S8015CR201501284  
The Honorable Steven F. Conn, Judge (retired)

**AFFIRMED**

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COUNSEL

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

Law Office of Daniel DeRienzo, P.L.L.C., Prescott Valley  
By Daniel J. DeRienzo  
*Counsel for Appellant*

Suzanne Ross, Goodyear  
*Appellant*

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**MEMORANDUM DECISION**

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

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**M c M U R D I E, Judge:**

¶1 Suzanne Kay Ross appeals her convictions for possession of dangerous drugs for sale and possession of drug paraphernalia and the resulting sentences. Ross's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), certifying that, after a diligent search of the record, he found no arguable question of law that was not frivolous. Ross was given the opportunity to file a supplemental brief, and raised the following issues: violation of her Fourth Amendment right against unreasonable searches and seizures, credibility of witness testimony, ineffective assistance of counsel, denial of request for new counsel, discovery request denials, and violation of the Sixth Amendment Confrontation Clause. Counsel asks this court to search the record for arguable issues. *See Penson v. Ohio*, 488 U.S. 75 (1988); *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). After reviewing the record for arguable issues, we have found none and affirm Ross's convictions and sentences. *See State v. Thompson*, 229 Ariz. 43, 44–45, ¶¶ 1, 4, (App. 2012); *State v. Chavez*, 407 P.3d 85, 87, ¶ 6, n.3 (Ariz. App. 2017).

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In the middle of the day on October 20, 2015, police knocked on the door of a mobile home in Bullhead City pursuant to a drug investigation. Suzanne Kay Ross answered the door. The officers informed Ross of their identity as police officers and that they were conducting a drug investigation. The officers asked to enter Ross's home. Ross opened the door to her home and moved aside to let the officers in.

¶3 While inside, Sergeant Holdway asked Ross if she had anything illegal in her home. Ross responded affirmatively, and led Sergeant Holdway to the bedroom. Ross then pointed to a dresser within the bedroom closet. On top of the dresser were illegal drugs and drug paraphernalia. Sergeant Holdway then led Ross to the living room where he asked Officer Cornelison to retrieve a search consent form from outside. Upon return, Officer Cornelison read the consent form to Ross, filled out

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the form in front of Ross, and Ross signed the form. The three officers present in the mobile home commenced a search of the home and discovered money, several drug pipes, methamphetamine pipes, a scale, small plastic baggies, and a large quantity of methamphetamine.

¶4 Ross was indicted on charges of possession of dangerous drugs for sale and possession of drug paraphernalia. Before trial, Ross moved to suppress the evidence obtained from the officers' search of Ross's home. The court held a two-day hearing on the motion to suppress, after which, the court denied the motion.

¶5 After a two-day trial, the jury found Ross guilty of one count of possession of dangerous drugs for sale, a Class 2 felony, and one count of possession of drug paraphernalia, a Class 6 felony. The court sentenced Ross to a term of six years' imprisonment for possession of dangerous drugs for sale, to be served concurrently to a term of six months' imprisonment for possession of drug paraphernalia, with 71 days' presentence incarceration credit. Ross timely appealed, and we have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.01(A)(1), 13-4031, and -4033(A).

## DISCUSSION

¶6 We have read and considered counsel's brief and have reviewed the record for any arguable issues. *See Leon*, 104 Ariz. at 300. We find none.

¶7 Ross was present and represented by counsel at all stages of the proceedings against her. The record reflects the superior court afforded Ross all her constitutional and statutory rights, and the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The superior court conducted appropriate pretrial hearings, and the evidence presented at trial and summarized above was sufficient to support the jury's verdicts. Ross's sentences fall within the range prescribed by law, with proper credit given for presentence incarceration.

¶8 In her supplemental brief, Ross raises the following issues: violation of her Fourth Amendment right against unreasonable searches and seizures, credibility of witness testimony, ineffective assistance of counsel, denial of new representation, and violation of the Sixth Amendment Confrontation Clause.

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**A. Violation of the Fourth Amendment Right Against Unreasonable Searches and Seizures**

**¶9** Ross contends she did not consent to the search of her home by officers on October 20, 2015. Before trial, Ross moved to suppress evidence stemming from the officers' search of her home. The superior court held a two-day hearing on January 27, 2017, and February 15, 2017, ultimately denying the motion.

**¶10** "We review the denial of a motion to suppress for an abuse of discretion." *State v. Ontiveros-Loya*, 237 Ariz. 472, 475, ¶ 5 (App. 2015). If there is "any reasonable evidence in the record to sustain [a decision]," we will uphold the decision. *State v. Morris*, 215 Ariz. 324, 341, ¶ 77 (2007). Sergeant Holdway, Officer Cornelison, Sergeant Arvizu, and Ross all testified at the motion hearing. The court found Ross consented to the officers entering Ross's home and signed a consent form prior to the full search. Considering the testimony and evidence presented at the hearing, the superior court did not abuse its discretion by denying Ross's motion to suppress evidence on Fourth Amendment grounds.

**B. Credibility of Witness Testimony**

**¶11** Ross contends the witnesses whom testified at trial were untruthful in their testimony. Arizona Rule of Evidence 607 allows a defendant to impeach the credibility of witnesses testifying at trial. Ross had the opportunity to impeach the testimony of witnesses at trial through cross-examination and introduction of additional evidence or witnesses. It is the province of the jury, however, and not this court, "to weigh the evidence and determine the credibility of the witnesses." *State v. Williams*, 209 Ariz. 228, 231, ¶ 6 (App. 2004).

**C. Ineffective Assistance of Counsel**

**¶12** Ross contends her attorney ineffectively represented her during the proceedings. Ineffective assistance of counsel claims can only be raised in post-conviction relief proceedings, not on direct appeal. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002). We do not address ineffective assistance of counsel claims on direct appeal. *See id.*

**D. Denial of Request for New Counsel**

**¶13** Ross contends that she was improperly denied new representation when she requested new counsel from the superior court. "If a defendant establishes a total breakdown in communication, or an

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irreconcilable conflict with [her] attorney, then the trial judge must grant the request for new counsel." *State v. Torres*, 208 Ariz. 340, 343, ¶ 8 (2004). Additionally, "[a] court may deny a defendant the right to choose counsel in the face of the 'public need for the efficient and effective administration of justice.'" *Robinson v. Hotham*, 211 Ariz. 165, 169, ¶ 14 (App. 2005). This includes denying a defendant's choice of counsel "whose appointment would cause an unreasonable delay in the proceedings to allow adequate preparation." *Id.*

**¶14** Ross made a request to hire a private attorney before the start of her trial. The superior court denied Ross's request to continue trial in order to obtain private counsel.

**¶15** A defendant who can afford to retain private counsel generally may choose the attorney who will represent her. *See United States v. Gonzalez-Lopez*, 548 U.S. 140, 144 (2006). A defendant's "right [to choose counsel], however, is not absolute." *State v. Coghill*, 216 Ariz. 578, 588, ¶ 40 (App. 2007). "A trial court has 'wide latitude in balancing the right to counsel of choice against the needs of fairness, and against the demands of its calendar.'" *State v. Aragon*, 221 Ariz. 88, 90, ¶ 5 (App. 2009) (quoting *Gonzalez-Lopez*, 548 U.S. at 152). Whether the court errs by denying a defendant's request for a continuance to substitute private counsel depends on the circumstances of the case. *Id.* Among the factors we consider on review are:

whether other continuances were [previously] granted; whether the defendant had other competent counsel prepared to try the case; the convenience or inconvenience to the litigants, counsel, witnesses, and the court; the length of the requested delay; the complexity of the case; and whether the requested delay was for legitimate reasons or was merely dilatory.

*Id.* (quoting *State v. Hein*, 138 Ariz. 360, 369 (1983)). The time to make such a request is before the trial begins, not after.

**¶16** In light of the timing of the request, the superior court did not abuse its discretion by denying Ross's request for new counsel. Likewise, Ross does not claim there were any breakdowns in communication or irreconcilable conflicts with her attorney, and we are unable to find any in the record.

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**E. Discovery Request Denial**

¶17 Ross contends that she made a discovery request that was denied. However, Ross does not point to any specific motion or request in the record, and we are unable to find any.

**F. Sixth Amendment Confrontation Clause Violation**

¶18 Ross contends that she was denied the right to face her accuser. The Sixth Amendment states “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” U.S. Const. amend. VI. Ross was present at all trial proceedings where her accusers testified. Furthermore, a defendant’s right to confront witnesses includes the right to cross-examine witnesses. *State v. Moody*, 208 Ariz. 424, 458, ¶ 136 (2004). Ross cross-examined all the State’s witnesses through counsel.

**CONCLUSION**

¶19 Ross’s convictions and sentences are affirmed. After the filing of this decision, defense counsel’s obligations pertaining to Ross’s representation in this appeal will end after informing Ross of the outcome of this appeal and her future options, unless counsel’s review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584–85 (1984).



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