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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

HOLLY REBECCA KOERNER, *Appellant*.

No. 1 CA-CR 17-0777
FILED 8-28-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-001824-001
The Honorable Douglas Gerlach, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Edward F. McGee
Counsel for Appellant

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MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which Presiding Judge Michael J. Brown and Judge Maria Elena Cruz joined.

WEINZWEIG, Judge:

¶1 Holly Rebecca Koerner appeals her conviction for trafficking in stolen property in the second degree and resulting sentence. Koerner’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. Counsel asks this court to search the record for reversible error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). Koerner filed a supplemental brief in which she raises several issues. After reviewing the record, we affirm Koerner’s conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND

¶2 Several items were stolen from a Phoenix pawn shop in January 2016, including a gold ring with diamonds. The next morning, a man named “Gary” approached Koerner in a nearby park, where she lived homeless. Koerner had met Gary only four weeks earlier. She described him as “shady” and said, “you can tell he’s, you know, a criminal.” Gary had jewelry in his possession, including a gold ring with diamonds, which he offered for sale to Koerner. Gary had a detached \$750 price tag for the gold ring. Koerner bought the ring for \$60.

¶3 Koerner went to the nearest pawn shop to turn a quick profit. She presented the ring at the counter along with the \$750 price tag as her “proof of purchase.” The sales associate immediately recognized the tag because the pawn shop used identical price tags for its jewelry. He searched the store’s records as Koerner waited and learned an identical ring had just been stolen from the shop that shared the same gold description, number of carats, weight and price tag.

¶4 The store manager contacted police. Officers arrested Koerner at the scene. She was taken to the police station, read her *Miranda* rights and interviewed. The interview was recorded and later presented at trial. Koerner conceded that she knew or believed the ring had been stolen.

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She said that “Gary sells stuff [which] I know . . . is not his” and acknowledged “there [were] issues getting a ring like that for 60 bucks and that she’s not stupid.”

¶5 Koerner was charged with trafficking property in the second degree, a class 3 felony. A jury found her guilty after a two-day trial. Koerner absconded as the jurors were being polled, but was apprehended after the court issued a bench warrant for her arrest.¹ The court then conducted a trial on the State’s allegations of prior convictions. The court found clear and convincing evidence that Koerner had five prior felony convictions and thus sentenced her as a category three repetitive offender. A.R.S. § 13-907(C). Koerner received a mitigated prison term of 7.5 years with 58 days’ credit for presentence incarceration.

¶6 Koerner timely appealed. We have jurisdiction pursuant to Ariz. Const. art. 6, § 9, and A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1).

DISCUSSION

A. Koerner’s Supplemental Brief.

¶7 Koerner expresses several arguments in her supplemental brief, but never develops them with legal authorities or record citations. Although her failure “usually constitutes abandonment and waiver of that claim,” *State v. Carver*, 160 Ariz. 167, 175 (1989), we nevertheless exercise our discretion to consider her arguments as we understand them.

1. Sentence of Imprisonment.

¶8 Koerner first contests the length of her sentence. She argues it was unfair to be sentenced as a category three repetitive offender because her prior convictions had been set aside in 2007 under A.R.S. § 13-907. Her argument fails, however, because her prior convictions were not nullified and “the legislature has expressly determined that a set aside conviction may be used to enhance or aggravate future sentences.” *State v. Hall*, 234 Ariz. 374, 377, ¶ 11 (App. 2014) (citing A.R.S. § 13-907(C)).

¹ In connection with her apprehension, Koerner was charged with possession of marijuana, a class 6 felony. She later pled guilty to the charge in a separate case, CR2016-144217-001. That case is not before us. We therefore will not consider Koerner’s challenge to the guilty plea.

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¶9 Koerner also contends that the State failed to prove her prior felony convictions. The State bears the burden of proving a prior conviction by clear and convincing evidence. *State v. Cons*, 208 Ariz. 409, 415, ¶ 15 (App. 2004). “The proper procedure to establish [a] prior conviction is for the state to offer in evidence a certified copy of the conviction . . . and establish the defendant as the person to whom the document refers.” *State v. Lee*, 114 Ariz. 101, 105 (1976).

¶10 The State met its burden here. It offered certified court documents from Koerner’s three prior criminal cases, including a plea agreement in which she pled guilty to five felonies, the related judgment and sentence. The State also presented a certified copy of Koerner’s booking photo from the Maricopa County Sheriff’s Office. Koerner offered her full name, date of birth and social security number at trial, which are consistent with the person identified in the certified documents.

2. Request to Change Counsel.

¶11 Koerner twice requested a change of counsel in the superior court. Both were denied. Koerner now argues this was error. We review the denial of a request to change counsel for a clear abuse of discretion. *State v. Paris-Sheldon*, 214 Ariz. 500, 504, ¶ 8 (App. 2007).

¶12 A criminal defendant has a Sixth Amendment right to be represented by competent counsel. *State v. Moody*, 192 Ariz. 505, 507, ¶ 11 (1998). “A defendant is not, however, entitled to counsel of choice, or to a meaningful relationship with his or her attorney.” *Id.* Generally, a defendant must show “a complete breakdown in communication or an irreconcilable conflict between [the] defendant and his appointed counsel.” *State v. Torres*, 208 Ariz. 340, 342, ¶ 6 (2004). To satisfy this burden, Koerner must demonstrate either (1) a “severe and pervasive conflict” with her attorney or (2) that she had such minimal contact with her attorney that meaningful communication was not possible. *State v. Hernandez*, 232 Ariz. 313, 318, ¶ 15 (2013).

¶13 Koerner did not meet her burden. She first requested a change of counsel “to have a second opinion” about an expiring plea deal. The court said Koerner was free to hire an attorney, if she wished. Koerner complained that “I just haven’t been told, like, all of the details in [the plea form].” She pointed to names on the form that “should not be in there.” The court explained that the State added the names, not her lawyer, because Koerner had used them in past dealings with police. The court denied Koerner’s request, finding insufficient grounds.

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¶14 Koerner again moved to change counsel after trial but before sentencing. Her motion included no reason for changing counsel or argument and analysis. The court denied the motion.

¶15 The superior court did not abuse its discretion in denying both requests. Koerner never presented enough evidence to justify a change of counsel.

3. Trial.

¶16 Koerner last asserts that her case should have been separated from her “co-defendants” because she did not know them and was “not involved in anything they did . . . in any way, shape or form.” There were no co-defendants in this case. Her argument fails.

B. Fundamental Error Review.

¶17 We have read and considered counsel’s brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. We find none.

¶18 Koerner was present and represented by counsel at all stages of the proceedings against her, except when counsel waived her presence. The record reflects that the superior court afforded Koerner all her constitutional and statutory rights, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial and summarized above was sufficient to support the jury’s verdict. Koerner’s sentence falls within the range prescribed by law, with proper credit given for presentence incarceration.

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CONCLUSION

¶19 Koerner’s conviction and sentence are affirmed. Defense counsel’s obligations pertaining to Koerner’s representation in this appeal have ended. Counsel need only inform Koerner of the outcome of this appeal and advise her of future options, unless counsel finds “an issue appropriate for submission” to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court’s own motion, Koerner has 30 days from the date of this decision to proceed, if she desires, with a *pro se* motion for reconsideration or petition for review.



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