

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

MATTHEW BRIAN SMITH, *Appellant*.

No. 1 CA-CR 17-0809  
FILED 8-7-2018

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Appeal from the Superior Court in Maricopa County  
No. CR2014-001394-001  
The Honorable Gregory Como, Judge

**AFFIRMED**

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COUNSEL

Bain & Lauritano, PLC, Glendale  
By Sheri M. Lauritano  
*Counsel for Appellant*

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

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**MEMORANDUM DECISION**

Judge James P. Beene delivered the decision of the Court, in which Presiding Judge Maria Elena Cruz and Judge Jennifer B. Campbell joined.

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**B E E N E, Judge:**

**¶1** This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969) following Matthew Brian Smith's ("Smith") convictions for theft of means of transportation, a class 3 felony, and burglary in the third degree, a class 4 felony. Smith's counsel searched the record on appeal and found no arguable question of law that is not frivolous. *See State v. Clark*, 196 Ariz. 530 (App. 1999). Counsel now asks us to search the record for fundamental error. After reviewing the entire record, we affirm Smith's convictions and sentences.

**FACTS<sup>1</sup> AND PROCEDURAL HISTORY**

**¶2** On August 17, 2012, Smith was moving his family out of their rental home pursuant to a deadline set by the landlord. Smith had moved items throughout the afternoon, into the evening, and into the early morning of the next day. Not yet complete with the move, at 5:00 a.m., Smith looked for a truck or trailer to help move the remaining items. Smith spotted his friend Fred's truck and asked Fred to help him locate a trailer.

**¶3** Fred took Smith to the trailer's location. The locked trailer was surrounded by a locked fence. Smith "cut the locks and hooked up the trailer and proceeded to try to move out as fast as [he] could." After moving two loads, Smith was pulled over by the police. The police discovered that the trailer did not belong to Smith but belonged to the victim. Smith was subsequently arrested.

**¶4** Smith was charged with Count 1, theft of means of transportation, a class 3 felony, and Count 2, burglary in the third degree, a

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<sup>1</sup> "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, ¶¶ 2-3 (App. 2015) (citation omitted).

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class 4 felony. Smith proceeded to trial and was found guilty on both counts. At a status conference prior to sentencing, the superior court found that Smith had four prior felony convictions. Smith was sentenced to presumptive, concurrent terms of 11.25 years' incarceration on Count 1 and 10 years' incarceration on Count 2. Smith timely appealed his conviction. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).

## DISCUSSION

¶5 The record reflects no fundamental error in pretrial or trial proceedings. Smith was represented by counsel and present at all critical stages of the proceedings, except he was absent for both the jury verdict and aggravation phase of his trial. Smith's absence was voluntary as he had personal notice of the date and time of the proceedings, notice of the right to be present at the proceedings, and notice that the proceedings would move forward in his absence. *See State v. Reed*, 196 Ariz. 37, 38, ¶ 3 (App. 1999); *see also* Ariz. R. Crim. P. 9.1. The superior court conducted a *Donald*<sup>2</sup> hearing in Smith's presence.

¶6 The jury was properly comprised of twelve jurors and three alternates. The State presented direct and circumstantial evidence sufficient for a reasonable jury to convict. The court appropriately instructed the jury on the elements of the charges. The key instructions concerning burden of proof, presumption of innocence, reasonable doubt, and the necessity of a unanimous verdict were also properly administered. The jury returned unanimous guilty verdicts on both counts.

¶7 The superior court received a presentence report, accounted for aggravating and mitigating factors, and provided Smith an opportunity to speak at sentencing. The court properly imposed a legal sentence for the crimes of which he was convicted.

## CONCLUSION

¶8 We have reviewed the entire record for reversible error and find none; therefore, we affirm the convictions and resulting sentences.

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<sup>2</sup> *State v. Donald*, 198 Ariz. 406 (App. 2000).

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¶9 After the filing of this decision, defense counsel's obligation pertaining to Smith's representation in this appeal will end. Defense counsel need do no more than inform Smith of the outcome of this appeal and his future options, unless, upon review, 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, Smith has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Further, Smith has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.



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