

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ARTHUR WILL BURRELL, III, *Appellant*.

No. 1 CA-CR 18-0194
FILED 12-4-2018

Appeal from the Superior Court in Maricopa County
No. CR2016-140842-001
The Honorable Michael D. Gordon, Judge

AFFIRMED

COUNSEL

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

Maricopa County Public Defender's Office, Phoenix
By Mark E. Dwyer
Counsel for Appellant

MEMORANDUM DECISION

Presiding Judge Kenton D. Jones delivered the decision of the Court, in which Vice Chief Judge Peter B. Swann and Judge David D. Weinzwieg joined.

J O N E S, Judge:

¶1 Arthur Will Burrell, III, appeals his convictions and sentences for one count each of criminal damage and disorderly conduct. After searching the entire record, Burrell’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. Burrell was granted an opportunity to file a supplemental brief *in propria persona* but did not do so. After reviewing the entire record, we find no error. Accordingly, Burrell’s convictions and sentences are affirmed.

FACTS AND PROCEDURAL HISTORY

¶2 On August 26, 2016, Burrell was asked to leave a light rail platform after failing to produce a ticket when asked.¹ As he was leaving the platform, Burrell struck five windows of the nearby light rail train with a skateboard, shattering glass onto at least one passenger and causing \$7,908.84 in damage. Burrell’s actions were recorded by a security camera on the platform. Police detained Burrell shortly thereafter and later arrested him after a one-on-one identification by a light rail security guard.

¶3 The State charged Burrell with one count each of criminal damage and disorderly conduct. Burrell was found not competent to stand trial in January 2017 but was later restored and found competent in July 2017. Burrell’s counsel filed a second motion to determine competency in

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, ¶ 2 n.2 (App. 2015) (quoting *State v. Valencia*, 186 Ariz. 493, 495 (App. 1996)).

STATE v. BURRELL
Decision of the Court

August 2017, and, after further evaluation by two mental health experts, Burrell was again found competent.

¶4 Throughout the three-day trial, Burrell elected to appear at trial in his jail attire and visibly restrained. Each day, outside the presence of the jury, the trial court confirmed Burrell's choice was voluntary and, at Burrell's request, adjusted the restraints to allow him to write.

¶5 At the close of the State's case, Burrell moved unsuccessfully for judgment of acquittal, and the jury convicted him as charged. The jury also found Burrell had caused between \$2,000 and \$10,000 in damage. The trial court sentenced Burrell as a non-dangerous, non-repetitive offender to time served on both counts after crediting him with 567 days' presentence incarceration. Burrell 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."). As relevant here, a person is guilty of criminal damage if he "[r]ecklessly defac[es] or damag[es] property of another person," and the offense is a class 5 felony if he causes damage "in an amount of two thousand dollars or more but less than ten thousand dollars." A.R.S. § 13-1602(A)(1), (B)(3). A person is guilty of the misdemeanor offense of disorderly conduct if, "with intent to disturb the peace or quiet of a . . . person, . . . [he] [e]ngages in fighting, violent or seriously disruptive behavior." A.R.S. § 13-2904(A)(1). The record contains sufficient evidence upon which the jury could determine beyond a reasonable doubt Burrell was guilty of the charged offenses.

¶7 All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Burrell was represented by counsel at all stages of the proceedings. *See State v. Conner*, 163 Ariz. 97, 104 (1990) (right to counsel at critical stages) (citations omitted). Burrell was present for most of the critical stages of the proceedings, including the entire trial and the verdict, *see State v. Bohn*, 116 Ariz. 500, 503 (1977) (right to be present at critical stages), but was not present for his initial appearance as a result of his repeatedly refusing to be

² Absent material changes from the relevant date, we cite the current version of statutes and rules.

STATE v. BURRELL
Decision of the Court

transported to the court. In his absence, the trial court entered a plea of not guilty to all charges on his behalf and then found reasonable grounds existed for Rule 11 competency proceedings. Thus, although Burrell failed to appear for the initial appearance, he was not prejudiced by his absence. *State v. Leenhouts*, 218 Ariz. 346, 348 (2008) (“Prejudice exists if the failure to arraign a defendant deprives him or her of notice of the charges and thereby deprives the defendant of the opportunity to defend against those charges.”) (citing *State v. Curry*, 187 Ariz. 623, 631 (App. 1996), and *State v. Dungan*, 149 Ariz. 357, 362 (App. 1985)). Burrell also waived his presence at several pretrial hearings regarding his competency to stand trial by refusing to be transported to the court, but the record does not suggest any fundamental error in the Rule 11 competency proceedings.

¶8 Additionally, 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 Burrell’s presumption of innocence. The court also properly confirmed Burrell’s voluntary decision to remain in prison attire with visible restraints. Cf. *State v. Eddington*, 226 Ariz. 72, 78, ¶ 16 (App. 2010) (“[C]riminal defendants have a constitutional right to appear in non-jail attire.”). At sentencing, Burrell was given an opportunity to speak, and the court stated upon the record the evidence and materials it considered and the factors it found in imposing the sentences. See Ariz. R. Crim. P. 26.9, 26.10. Additionally, the sentences imposed were within the statutory limits. See A.R.S. §§ 13-702(A), (D), -707(A)(1).

CONCLUSION

¶9 Burrell’s convictions and sentences are affirmed.

¶10 Defense counsel’s obligations pertaining to Burrell’s representation in this appeal have ended. Defense counsel need do no more than inform Burrell 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).

STATE v. BURRELL
Decision of the Court

¶11 Burrell 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 Burrell thirty days from the date of this decision to file an *in propria persona* motion for reconsideration. See Ariz. R. Crim. P. 31.20.



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