

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

KEVIN E. EISLER, *Appellant*.

No. 1 CA-CR 18-0233

FILED 1-9-2020

Appeal from the Superior Court in Maricopa County

No. CR2017-001738-001

The Honorable Joan M. Sinclair, Judge

AFFIRMED IN PART; VACATED IN PART

COUNSEL

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

The Law Office of Kyle T. Green, Tempe
By Kyle Green
Counsel for Appellant

MEMORANDUM DECISION

Judge David D. Weinzweig delivered the decision of the Court, in which
Presiding Judge Randall M. Howe and Judge Jennifer M. Perkins joined.

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WEINZWEIG, Judge:

¶1 Kevin Edward Eisler appeals his convictions and sentences for 11 counts of Organized Retail Theft and two counts of Trafficking in Stolen Property. After searching the record and finding no arguable, non-frivolous question of law, Eisler’s counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), asking this court to search the record for fundamental error. Eisler had the opportunity to file a supplemental brief but did not. We affirm Eisler’s convictions and sentences after reviewing the record, but vacate the portion of the sentencing order requiring him to pay the cost of DNA testing.

FACTS AND PROCEDURAL BACKGROUND

¶2 A police officer stopped Eisler for driving with expired registration tags, and noticed several unopened cases of beer and meat products scattered in the backseat. The items were not bagged and no sales receipts were found. Eisler said he had just purchased the items and was headed to a family get-together. The officer impounded Eisler’s vehicle based on the expired tags, and Eisler left with the groceries in a friend’s truck.

¶3 Based on his training and experience, the police officer became suspicious about the loose groceries and absent proof of purchase. As such, the officer drove directly to the nearest Safeway grocery store, described Eisler to the manager and asked about recent thefts. After watching the surveillance footage, the Safeway manager contacted the officer and reported that Eisler had stolen the beer and other items.

¶4 The police then secured a search warrant to track Eisler’s vehicle with a GPS device. Over the next four days, Eisler visited at least nine Safeway and Fry’s grocery stores in Phoenix, Scottsdale, Chandler and Gilbert. Each time, Eisler entered the store, loaded a shopping cart full of beer, wheeled the cart from the store without paying, and unloaded the beer into his vehicle. Officers collected surveillance footage from the grocery stores as evidence and photographed several cases of beer inside Eisler’s car.

¶5 At two points during this period, Eisler met an individual who drove a black truck and exchanged the beer for cash. Police recorded the second transaction at a Phoenix strip club, when Eisler loaded at least 14 cases of beer into the truck. Officers later seized Eisler’s phone and text

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messages under a search warrant. His text messages confirmed the transactions, including that Eisler received \$200 for the second deal.

¶6 Eisler was arrested. Police found 14 grams of marijuana in Eisler's home. A grand jury indicted Eisler on 11 felony counts of Organized Retail Theft and two felony counts of Trafficking in Stolen Property.¹

¶7 The State called six witnesses at trial, including three police officers and representatives from Safeway and Fry's grocery stores. The jury convicted Eisler of all 13 counts. As aggravating circumstances, the jury found that Eisler had six prior felony convictions and committed current offenses while released on bail, for pecuniary gain and with an accomplice. The superior court sentenced Eisler to 11 terms of 14 years' incarceration and two terms of 17.75 years' incarceration, all running concurrently, with 380 days of credit for presentence incarceration.

¶8 Eisler timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21(A)(1), 13-4031, and -4033(A)(1).

DISCUSSION

¶9 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.

¶10 Eisler was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Eisler all his 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 verdicts. And Eisler's sentences fall within the range prescribed by law.

CONCLUSION

¶11 We affirm Eisler's convictions and sentences, but vacate the portion of the sentencing order requiring Eisler to pay the cost of DNA testing. *See State v. Reyes*, 232 Ariz. 468, 472, ¶ 11 (App. 2013) (explaining

¹ Eisler was also indicted for Possession or Use of Marijuana, which was later reduced to a misdemeanor under a limited plea agreement.

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that the legislature did not intend for convicted felons to pay the cost of DNA testing).

¶12 Counsel's obligations in this appeal will end once Eisler is informed of the outcome and his future options, unless counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court's own motion, Eisler has 30 days from the date of this decision to proceed with a pro se motion for reconsideration or petition for review.



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