IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

GERALD VAUGHN GWEN, *Appellant*.

No. 1 CA-CR 18-0775
FILED 1-14-2020

Appeal from the Superior Court in Yavapai County
No. V1300CR201580451
The Honorable Michael R. Bluff, Judge

AFFIRMED

COUNSEL

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

Law Offices of Gonzales & Poirier, PLLC, Flagstaff
By Antonio J. Gonzales
Counsel for Appellant

Gerald Vaughn Gwen, Camp Verde
Appellant

MEMORANDUM DECISION

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Diane M. Johnsen joined.

C A T T A N I, Judge:

¶1 Gerald Vaughn Gwen appeals his convictions and sentences for taking the identity of another; theft of a credit card; fraudulent schemes and artifices; theft involving property with a value of $4,000 or more but less than $25,000; and forgery. Gwen'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). Gwen filed a supplemental brief raising multiple issues, none of which establish a basis for relief. Accordingly, and for reasons that follow, we affirm Gwen's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND

¶2 Gwen was employed by Dahl Jones Food Company ("Dahl") until Gwen alleged verbal and physical abuse, at which point the parties mutually agreed to terminate Gwen's employment. Gwen and Dahl agreed that Gwen would receive three months' salary as severance, paid in two computer-generated checks of $5,313.06 each.

¶3 Two months later, Dahl's chief financial officer ("CFO") discovered unauthorized activity on Dahl's business accounts including the purchase of a $4,000 mountain bike to be shipped to Gwen's home address and two handwritten checks with a signature stamp (rather than a computer-generated signature) in the same amounts as Gwen's severance checks ($5,313.06). Dahl's CFO contacted law enforcement and the bank to report these unauthorized transactions.

¶4 Police investigation revealed that Gwen had used the fraudulent checks to obtain a $5,000 money order to buy a vehicle. Dahl's CFO also discovered Gwen had used a third unauthorized check to buy multiple electronic devices from a retail store. Police then obtained warrants to search Gwen's home, the purchased vehicle, and a rented

trailer. Those searches revealed $3,600 in cash, a receipt from the retail store and the electronic devices purchased there, a receipt for the cashier's check, and a piece of paper with the CFO's debit-card number.

¶5 After a five-day trial, a jury convicted Gwen as outlined above. The superior court sentenced him to concurrent terms of imprisonment, the longest of which is 5 years, with 625 days of presentence incarceration credit. Gwen timely appealed.

DISCUSSION

I. Gwen's Supplemental Brief.

¶6 We address Gwen's arguments as they appear in his supplemental brief.

A. Defective Indictment.

¶7 Gwen contends that the indictment was defective because the evidence presented to the grand jury did not support a probable cause determination, the indictment contained false and misleading information, and he was denied substantial procedural rights.

¶8 Generally, any challenge to the sufficiency of a grand jury indictment must be made by way of special action prior to trial. *State v. Moody*, 208 Ariz. 424, 439–40, ¶ 31 (2004). The only exception to this rule, and thus the only such issue reviewable on direct appeal, is a claim that the State knew the indictment was partially based on perjured, material testimony. *State v. Murray*, 184 Ariz. 9, 32 (1995). Because Gwen did not seek relief by special action,[1] we review only to determine whether the indictment was based on perjured, material testimony.

¶9 "To constitute perjury, the false sworn statement must relate to a material issue and the witness must know of its falsity." *Moody*, 208 Ariz. at 440, ¶ 34 (citing A.R.S. § 13-2702(A)(1)). A material statement is one that could have affected the proceeding. *Id*. at ¶ 35 (citing A.R.S. § 13-2701(1)). "Contradictions and changes in a witness's testimony alone do

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[1] Gwen asserts that he was unable to timely challenge the grand jury determination of probable cause because he was not provided a transcript of the grand jury proceeding until May 2017. But Gwen admits that the transcript was provided to his original public defender—and ultimately provided to him—and he fails to explain why he did not seek relief by special action once he received the transcript.

not constitute perjury and do not create an inference, let alone prove, that the prosecution knowingly presented perjured testimony." *Tapia v. Tansy*, 926 F.2d 1554, 1563 (10th Cir. 1991); *see also State v. Morrow*, 111 Ariz. 268, 271 (1974).

¶10 Gwen asserts that the grand jury witness "made false statements and a misrepresentation of material fact" when he testified that "Clinton Arnett" was the party responsible for ordering the mountain bike online, that the transaction was flagged by the online vendor, that Gwen called the online vendor, that all the events occurred within Yavapai County, and that the fraudulent checks came from a desk drawer.

¶11 But Gwen has failed to show that these statements were material or that the testifying witness knew they were false. And because other substantial evidence apart from the allegedly false statements supported the finding of probable cause, the statements could not reasonably have unfairly influenced the grand jury's determination of probable cause. *See Moody*, 208 Ariz. at 440, ¶ 36. Gwen thus is not entitled to relief.

B. Right to a Preliminary Hearing.

¶12 Gwen argues that he was wrongfully denied a preliminary hearing. *See* Ariz. R. Crim. P. 5.1(a). But because the State charged him by a grand jury indictment, not a complaint, Gwen was not entitled to a preliminary hearing. *See* Ariz. Const. art. 2, § 30; Ariz. R. Crim. P. 2.2, 5.1(a) (providing for a preliminary hearing "if charged in a complaint"); *State v. Meeker*, 143 Ariz. 256, 265 (1984) ("Either indictment by a grand jury or information after a preliminary hearing is a constitutionally proper method of bringing an accused felon to trial.").

¶13 Gwen also contends that he was not provided notice of a supervening indictment as contemplated by Rule 12.6. The record shows, however, that the superior court sent notice of a supervening indictment to both Gwen and defense counsel, so Gwen has not established error.

C. Illegal Stop and Arrest.

¶14 Gwen contends he was illegally stopped and detained under false pretenses.

¶15 A traffic stop is valid if a lawful, objective reason exists to make the stop. *State v. Swanson*, 172 Ariz. 579, 582 (App. 1992). A violation of traffic laws is one such sufficient objective basis to stop a vehicle. *State v.*

Acosta, 166 Ariz. 254, 257 (App. 1990). A police officer may arrest a suspect without a warrant if there is probable cause to believe the suspect has committed a felony. A.R.S. § 13-3883(A)(1).

¶16 Although the record is unclear as to why a law enforcement officer pulled Gwen over, Gwen concedes that he was stopped for a minor traffic infraction, which itself sufficiently justifies the traffic stop. And at the time of the arrest, Gwen was driving the vehicle acquired by using the fraudulent checks. Based on the information provided by Dahl and the bank, police were aware that Gwen had obtained the car with stolen funds and thus had probable cause to make a warrantless arrest.

D. Illegal Search and Seizure.

¶17 Gwen asserts that officers searched his rented trailer four days before they obtained a warrant on September 24. Gwen relies on the trial transcript in which the witness states that he executed the search warrant on September 20. But this appears to be an error in transcription. During trial, the prosecutor asked the testifying witness if the rented trailer was "searched on the 28th of 2015." According to the transcript, the witness responded, "September 20th of 2015 is when I searched the [trailer], *yes*," suggesting agreement that the search occurred on September 28. Even insofar as this portion of the transcript may be ambiguous, the witness later specifically stated that he executed this search warrant on September 28.

¶18 Gwen next argues that the superior court erred by denying his motion to suppress and that under *Franks v. Delaware*, 438 U.S. 154 (1978), he was denied due process as a result of the court's failure to hold a hearing.

¶19 We review a superior court's ruling on a motion to suppress for an abuse of discretion but review constitutional and legal issues de novo. *Moody*, 208 Ariz. at 445, ¶ 62. In *Franks*, the Supreme Court held that a defendant is entitled to a hearing to challenge a search warrant affidavit when he makes a substantial preliminary showing that (1) the affiant knowingly, intentionally, or with reckless disregard for the truth included a false statement in the affidavit, and (2) the false statement was necessary to the finding of probable cause. 438 U.S. at 154, 155–56.

¶20 Here, the superior court found that Gwen's motion to suppress did not make the requisite preliminary showing to trigger a *Franks* hearing, and the record supports this finding. The court properly analyzed the issue and did not err when it determined that Gwen's "brief, generalized motion" did not reach the threshold level required by *Franks*.

¶21 Gwen also argues that law enforcement officers were unable to account for his vehicle's movements for three days and that anyone could have accessed his vehicle during this time period. Any flaws in the chain of custody, however, go to the weight of the evidence, not its admissibility. *State v. Gonzales*, 181 Ariz. 502, 511 (1995).

E. Sufficiency of the Evidence.

¶22 Gwen argues that the State's case in chief was tainted by extrinsic fraud resulting from perjury, forged documents, concealment and misrepresentation of evidence, and bribery of a witness. He contends that there was no corroborating evidence to establish his guilt or involvement in the offenses. We disagree.

¶23 We will not disturb a jury's verdict if "substantial evidence" supports the verdict. *State v. Atwood*, 171 Ariz. 576, 597 (1992), *disapproved on other grounds by State v. Nordstrom*, 200 Ariz. 229, 241, ¶ 25 (2001). "Substantial evidence" is evidence from which a rational jury could have found the essential elements of the charged crimes beyond a reasonable doubt. *Id.*

¶24 Here, there was substantial evidence to support the verdicts. As to taking the identity of another entity, Gwen possessed and used the CFO's company debit-card information without his permission. *See* A.R.S. § 13-2008(A). And when Gwen used that debit-card information to buy a $4,000 mountain bike, he committed theft of a credit card. *See* A.R.S. § 13-2102(A). The record also supports the jury's finding that Gwen committed fraudulent schemes and artifices when he knowingly went to a bank and cashed a check he knew to be fraudulent. *See* A.R.S. § 13-2310(A). And the CFO's testimony that "there was no valid reason for [Dahl] to be giving Mr. Gwen two more payments equal to the payments which [Dahl] had made for his severance" and that Dahl would never issue handwritten payroll or severance checks supports the finding of theft. *See* A.R.S. 13-1802(A). The record also supports the jury's verdict that Gwen committed forgery when he presented the forged checks to the bank teller. *See* A.R.S. 13-2002(A)(3). Accordingly, the jury had adequate evidence from which to find Gwen guilty as charged.

¶25 Gwen also contends that the prosecution failed to disclose potentially exculpatory evidence as required by *Brady v. Maryland*, 373 U.S. 83 (1963), including bank statements, credit card statements, proof of his use of a debit card, proof of the existence of business checks, and certified bank records showing the business checks were actually cashed. This

obligation requires the State "to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment." *Pennsylvania v. Ritchie*, 480 U.S. 39, 57 (1987). But the State cannot disclose evidence it never possessed. *See State v. O'Dell*, 202 Ariz. 453, 457, ¶ 11 (App. 2002) (holding that the State did not violate *Brady* by failing to disclose evidence it never possessed in any useable form). And Gwen has failed to show that the requested evidence even existed or was material to his defense. *See United States v. Agurs*, 427 U.S. 97, 109–10 (1976) ("The mere possibility that an item of undisclosed information might have helped the defense, or might have affected the outcome of the trial, does not establish 'materiality' in the constitutional sense.").

F. Admissibility of Evidence.

¶26 Gwen argues that the superior court erred by admitting into evidence computer generated copies of checks because the checks were not self-authenticating documents under Arizona Rule of Evidence 902(4). But here, the checks were properly authenticated under Rule 901.

¶27 To properly authenticate an item of evidence, "the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is." Ariz. R. Evid. 901(a). The superior court "does not determine whether the evidence is authentic, but only whether evidence exists from which the jury could reasonably conclude that it is authentic." *State v. Lavers*, 168 Ariz. 376, 386 (1991). Once that standard is met, any uncertainty goes to the weight rather than the admissibility of the evidence. *State v. George*, 206 Ariz. 436, 446, ¶¶ 30–31 (App. 2003).

¶28 Dahl's CFO's testimony that he logged into his bank account online and printed the fraudulent checks for law enforcement provided the superior court with a reasonable basis for admitting the checks into evidence, and the court thus did not abuse its discretion by doing so.

¶29 Gwen also argues that the State's late disclosure of witness lists and exhibits unfairly prejudiced his right to a fair trial. Specifically, he claims that the admission of late-disclosed exhibits left little time for him to effectively examine or challenge the evidence before it was presented to jurors.

¶30 Arizona Rule of Criminal Procedure 15.7 permits a party to move for sanctions when an opposing party violates its disclosure obligations. A superior court's choice of sanction will not be reversed on appeal absent a showing of prejudicial surprise or delay. *State v. Martinez-*

Villareal, 145 Ariz. 441, 448 (1985); *see also State v. Rienhardt*, 190 Ariz. 579, 586 (1997).

¶31 Here, Gwen did not ask for additional time following the State's allegedly untimely disclosure. And the State had previously disclosed this evidence to Gwen, although it was not included on the trial exhibit list. Because Gwen has failed to show surprise or delay, the alleged late disclosure does not warrant reversal.

G. Tampering.

¶32 Gwen next asserts that one of the electronic devices and the retail-store receipt used as evidence against him were placed in his vehicle after his arrest. Gwen also asserts that significant portions of body camera footage were deleted and not provided to him. But Gwen offers no evidence of tampering, and the record does not support his contention, so the superior court did not err by admitting the now-challenged evidence. *See State v. Ritchey*, 107 Ariz. 552, 557 (1971).

¶33 Gwen also contends that the State purposefully concealed evidence by disclosing dispatch logs only two days before trial, even though they were generated over a year earlier. But the superior court repeatedly asked Gwen what sanction he would suggest for the delayed disclosure. Although Gwen asked the court to dismiss his charges with prejudice, he also deferred to the court regarding the appropriate sanction. Given that Gwen was ultimately provided with the dispatch logs and declined the court's offer to delay the trial, the court did not abuse its discretion by determining that a *Willits*[2] instruction was the appropriate sanction.

H. Fair Trial.

¶34 Gwen next contends that he was ill-prepared for trial after the superior court denied his requests for paralegal services, an investigator, and access to a law library. Because Gwen was provided with advisory counsel, his constitutional right to court access was met, regardless whether he had personal access to legal materials. *See State v. Henry*, 176 Ariz. 569, 584 (1993) ("Library access is only one permissible means of affording the right of meaningful self-representation. Legal help is another."); *see also Bounds v. Smith*, 430 U.S. 817, 828 (1977) (requiring the state to provide either

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2 *State v. Willits*, 96 Ariz. 184 (1964).

"adequate law libraries or adequate assistance from persons trained in the law"), *abrogated in part by Lewis v. Casey*, 518 U.S. 343, 354 (1996).

¶35 Gwen also alleges that he faced unfair challenges compared to the prosecuting attorney because of his lack of resources and inability to access evidence. This, however, was a consequence of his decision to represent himself. The superior court warned Gwen of the dangers of representing himself, informing him that he was solely responsible for "asserting legal defenses, interviewing witnesses, doing investigations, doing legal research, filing and arguing motions, examining and cross-examining witnesses, giving opening statements and final arguments to the jury." *See Faretta v. California*, 422 U.S. 806, 835 (1975) (noting that a defendant "should be made aware of the dangers and disadvantages of self-representation"). And here, the record reveals that Gwen made a voluntary, knowing, and intelligent waiver of his right to counsel. Having knowingly waived his right to counsel, Gwen cannot now challenge the consequences of which the court warned him.

¶36 Additionally, Gwen asserts that he "did not have the means to subpoena witnesses on his behalf or summon rebut[t]al witnesses to challenge the State's case." He asserts that this issue was addressed by the court two days before trial, too late for Gwen to send subpoenas to potential witnesses and allow them to respond in time for trial. But Gwen did not ask for a continuance, file a motion stating he was unable to subpoena witnesses, or proffer names of witnesses who would be unavailable for trial.

¶37 Gwen next argues that he was denied a fair trial because he was not able to attack the legality of the search warrant during closing argument. The superior court, however, had previously denied Gwen's motion to suppress, and it was therefore improper for him to reargue it during trial.

I. Ineffective Assistance of Counsel.

¶38 Gwen argues that the superior court violated his Sixth Amendment right to counsel when it denied his request for substitute counsel and failed to hold a hearing after he advanced a claim of ineffective assistance of counsel. Ineffective assistance of counsel claims can only be brought in post-conviction proceedings, not on direct appeal. *State ex rel. Thomas v. Rayes*, 214 Ariz. 411, 415, ¶ 20 (2007). Consequently, we do not address these arguments.

J. Denial of Pretrial Motions.

¶39 Gwen next asserts that the superior court's denial of several pretrial motions without holding an evidentiary hearing violated his due process rights. But the superior court generally is not required to hold an evidentiary hearing when "there is no indication that a hearing would elicit additional facts beyond those already before the court." *State v. Gomez*, 231 Ariz. 219, 225–26, ¶ 29 (2012); *see also State v. Hidalgo*, 241 Ariz. 543, 548, ¶ 8 (2017).

¶40 Gwen further asserts that the superior court's decision to proceed with a hearing on pending motions in his absence violated his Fifth Amendment rights. But a defendant may voluntarily waive his right to be present at any proceeding. Ariz. R. Crim. P. 9.1. And here, Gwen voluntarily left the courtroom during the hearing, and his advisory counsel stood in on his behalf. Because Gwen voluntarily left the proceedings, the superior court did not err.

¶41 Gwen also asserts that the assigned judge wrongfully intercepted his petition for a change of judge, ostensibly violating federal law by unlawfully seizing and possessing mail addressed to the criminal presiding judge. A thorough review of the record reveals no evidence to support Gwen's claim, nor does Gwen cite to any in his supplemental brief. And any new evidence of this assertion must be presented in a post-conviction relief proceeding. *See State v. Scrivner*, 132 Ariz. 52, 54 (App. 1982) (stating that a post-conviction relief proceeding provides a forum to establish facts relating to a claim for relief when such facts were not established in the record), *disapproved of on other grounds by State v. Spreitz*, 202 Ariz. 1, 3, ¶ 11 (2002).

¶42 Gwen also argues that it was improper for the superior court to order him to send all pleadings to the public defender's office before proceeding in superior court. But this requirement was only put in place to ensure that documents were properly filed with the clerk's office with copies provided to the superior court and assigned prosecutor. Additionally, Gwen has not provided any evidence that the public defender's office failed to file any of his motions with the court.

K. Denial of Motion for Judgment of Acquittal.

¶43 Next, Gwen suggests that the superior court misapplied the law when considering his motion for judgment of acquittal. Gwen relies on the court's statement that "reasonable jurors could conclude or at least infer and then conclude that [Gwen is] guilty of the crimes that have been

charged." He argues that this statement is not consistent with the requirement that "substantial evidence" existed to sustain a verdict and that the court's comment suggests that jurors could simply guess, speculate, or assume guilt without facts. But, as described above, substantial evidence supports the convictions. *See supra* ¶ 24. And jurors are free to draw reasonable inferences from the evidence presented. *See State v. Bible*, 175 Ariz. 549, 595 (1993) ("If reasonable minds could differ as to whether the properly admitted evidence, and the inferences therefrom, prove all elements of the offense, a motion for acquittal should not be granted."). The superior court thus did not err by denying Gwen's motion for judgment of acquittal.

L. Denial of Motion to Vacate Judgment.

¶44 Gwen raises numerous arguments related to his motion to vacate judgment. But because Gwen filed his notice of appeal from the judgment of guilt and sentence before the superior court ruled on his motion to vacate judgment and did not thereafter file an amended notice of appeal from the denial of his post-trial motion, we lack jurisdiction to review this aspect of the proceedings. *See* Ariz. R. Crim. P. 24.2(d), 31.2(h). Moreover, even considering this section of Gwen's supplemental brief as a petition for special action relief, *see* A.R.S. § 12-120.21(A)(4); *Brown v. State*, 117 Ariz. 476, 477–78 (1978), Gwen is not entitled to relief.

¶45 Gwen contends that the superior court failed to articulate specific grounds or legal principles to justify denial of his motion to vacate judgment. But the ruling detailed the court's conclusion that Gwen had "not establish[ed] sufficient grounds for vacating the judgment pursuant to Rule 24.2(a)(2) [newly discovered evidence] or (3) [constitutional violation]," and the rule does not require explicit factual findings. *See generally* Ariz. R. Crim. P. 24.2.

¶46 Additionally, Gwen argues that the superior court abused its discretion when it required him to comply with the page limit of Rule 1.9(c) but did not require the State to comply with the time limit of Rule 1.9(b) for filing its response. But the court has discretion to waive these requirements, *see* Ariz. R. Crim. P. 1.9(d), and Gwen offers no authority for the proposition that the court was required to *sua sponte* strike the State's allegedly untimely response. And ultimately the superior court had ample grounds to grant the State's request for additional time because supplemental transcripts needed to be prepared for the State to adequately respond to Gwen's motion. Gwen thus has not shown error.

M. *Willits* Instruction.

¶47 Gwen argues that the superior court's *Willits* instruction to the jury was insufficient to cover the weight of harm caused by the destruction of evidence. Before trial, Gwen's motion for sanctions was granted after the State failed to disclose a police officer's personal cell phone records and dispatch tapes. To that end, the superior court gave the standard Arizona jury instruction that if the jury found that the State lost, destroyed, or failed to preserve evidence, then it could draw an inference unfavorable to the State. Rev. Ariz. Jury Instr., Stand. Crim. 10 (4th ed. 2017). Gwen did not object to the standard instruction at trial, and we discern no fundamental error in reading the standard *Willits* jury instructions to the jury. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 19 (2005).

N. Prosecutorial Misconduct.

¶48 Gwen contends that the prosecutor violated his due process rights by acting in bad faith, drawing improper inferences, making improper comments, and committing extrinsic fraud. To prevail on a claim of prosecutorial misconduct, a defendant must establish that "(1) misconduct is indeed present[,] and (2) a reasonable likelihood exists that the misconduct could have affected the jury's verdict, thereby denying [him] a fair trial." *Moody*, 208 Ariz. at 459, ¶ 145 (citation omitted). To warrant reversal, prosecutorial misconduct must be "so pronounced and persistent that it permeates the entire atmosphere of the trial." *State v. Morris*, 215 Ariz. 324, 335, ¶ 46 (2007) (citation omitted).

¶49 Gwen lists six pages of purportedly improper comments made by the prosecutor. Most of these comments concern Gwen's own statements to witnesses during questioning. Although a prosecutor may not comment on a defendant's invocation of his constitutional right to remain silent, *see State v. Sill*, 119 Ariz. 549, 551 (1978), comments on a defendant's statements freely made do not implicate this right. *Cf. Henry*, 176 Ariz. at 580. Such comments thus were not improper.

¶50 Gwen also contends that the prosecutor argued various facts that were not in evidence. A prosecutor may not refer to evidence outside the record or "testify" about matters not in evidence. *State v. Bailey*, 132 Ariz. 472, 477–78 (1982). But the examples Gwen cites involve witness testimony, which was in fact evidence, even if the witnesses referred to items known to them but not physically entered into evidence.

O. Witness Testimony.

¶51 Gwen alleges that all the witnesses who testified on behalf of the State perjured themselves. Gwen also argues that because the superior court denied his motions for discovery of statements made by witnesses interviewed by police, he was unable to effectively cross-examine the prosecution's witnesses. But the State previously informed the court that these witness statements did not exist. And the State is not required to disclose evidence that either does not exist or is not within its possession. *See* Ariz. R. Crim. P. 15.1(f); *O'Dell*, 202 at 457, ¶ 11.

¶52 Finally, Gwen alleges that nonexperts were wrongly allowed to testify to the authenticity of the signatures on the back of the checks. But a nonexpert is permitted to avow "that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation." Ariz. R. Evid. 901(b)(2). At trial, Dahl's CFO testified that he had previously seen Gwen's signature, and in his opinion Gwen's signature in the personnel file matched the signature on the checks. This testimony meets the requirements for admissible nonexpert opinion regarding handwriting.

II. Fundamental Error Review.

¶53 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.

¶54 The record reflects that the superior court afforded Gwen 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 was sufficient to support the jury's verdicts. Gwen was present and represented by counsel, or proceeded *pro se* with advisory counsel pursuant to a valid waiver, at all stages of the proceedings against him. Gwen's sentences fall within the range prescribed by law, and he received sufficient credit for presentence incarceration.

CONCLUSION

¶55 Gwen's convictions and sentences are affirmed. Upon the filing of this decision, Gwen's counsel's obligation to represent Gwen will end. Counsel need only inform Gwen of the outcome of this appeal and his 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). On the court's own motion, Gwen

has 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

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