

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JOSEPH GEORGE CARTER, *Appellant*.

No. 1 CA-CR 19-0368
FILED 2-27-2020

Appeal from the Superior Court in Mohave County
No. S8015CR201700532
The Honorable Richard D. Lambert, Judge

AFFIRMED

COUNSEL

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

Janelle A. McEachern, Attorney at Law, Chandler
By Janelle A. McEachern
Counsel for Appellant

STATE v. CARTER
Decision of the Court

MEMORANDUM DECISION

Presiding Judge Lawrence F. Winthrop delivered the decision of the Court, in which Judge Maria Elena Cruz and Judge David B. Gass joined.

WINTHROP, Judge:

¶1 Joseph George Carter (“Carter”) was convicted of unlawful use of means of transportation, a class 5 felony. This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297 (1969). Counsel for Carter has advised this Court that she has found no arguable question of law and asks us to search the record for fundamental error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999) (stating that this court reviews the entire record for reversible error). Carter was given an opportunity to file a supplemental brief *in propria persona*; he has not done so.

¶2 We have jurisdiction of this appeal pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1), 13-4031, and 13-4033(A).¹ After reviewing the record, we affirm Carter’s conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶3 We view the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Carter. See *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2 (App. 1998). In February 2015, Carter rented a home from J.S. located in Mohave County. With Carter’s permission, J.S. continued to store his dune buggy on the property while Carter lived there. A few months later, Carter moved J.S.’ dune buggy from the property to his brother’s house down the street without J.S.’ permission. Carter eventually told J.S. he moved the dune buggy to his brother’s property.

¶4 J.S. spoke with Carter’s brother, Jerry Carter, who agreed that J.S. could store his dune buggy on Jerry’s property until J.S. decided what he wanted to do with it. Carter was eventually evicted from J.S.’ property

¹ Absent material changes from the date of the alleged offenses, we cite to the current versions of all statutes and rules.

STATE v. CARTER
Decision of the Court

in January 2017. Following Carter's eviction, J.S. and Jerry agreed that Jerry would sell the dune buggy for \$3,000 and would keep a ten percent seller's fee. Jerry was not able to sell the dune buggy and told J.S. in March 2017 to move it off his property.

¶5 In April 2017, before J.S. was able to pick up his dune buggy, he was notified by a neighbor that his dune buggy had been moved from Jerry's property. J.S. called the police who were able to locate his dune buggy on a property on Laguna Road. Carter told police that he had moved the dune buggy without J.S.' permission. Jerry told police that he saw Carter tow the dune buggy from his property and that he had not given the dune buggy to Carter.

¶6 Carter was arrested and charged with theft of a means of transportation. The State alleged that Carter had two prior felony convictions. The State also alleged as aggravating circumstances that Carter committed the offense while on felony release and committed the offense for pecuniary gain.

¶7 After a two-day trial, the jury found Carter not guilty of theft of a means of transportation but found him guilty of the lesser-included offense of unlawful use of means of transportation. During the aggravation phase, the jury found that the State had proved that the offense was committed while Carter was on felony release but had not proved that he committed the offense for pecuniary gain.

¶8 The trial court sentenced Carter, as a category two repetitive offender, to a total of five years' imprisonment: a maximum three years' imprisonment for the offense, plus an additional two years' imprisonment under A.R.S. § 13-708(D) because the offense was committed while he was on felony release. The court also awarded Carter twenty-seven days of presentence incarceration credit. Carter timely appealed.

ANALYSIS

¶9 We review Carter's conviction and sentence for fundamental error. *See State v. Flores*, 227 Ariz. 509, 512, ¶ 12 (App. 2011). Counsel for Carter has advised this Court that after searching the entire record, she has found no arguable question of law that is not frivolous.

¶10 We have read and considered counsel's brief and fully reviewed the record for reversible error, *see Leon*, 104 Ariz. at 300, and find none. All the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, counsel

STATE v. CARTER
Decision of the Court

represented Carter at all stages of the proceedings, and the sentence imposed was within the statutory guidelines. We decline to order briefing and affirm Carter's conviction and sentence.

¶11 Upon the filing of this decision, defense counsel shall inform Carter of the status of the appeal and of his future options. Counsel has no further obligations unless, upon review, 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). Carter shall have thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

CONCLUSION

¶12 For the foregoing reasons, we affirm.



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