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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

ROBERT LINDSAY EARLE, JR., *Appellant*.

No. 1 CA-CR 19-0688
FILED 9-29-2020

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Appeal from the Superior Court in Yavapai County
No. V1300CR201780535
The Honorable Michael R. Bluff, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix
By Michael O'Toole
*Counsel for Appellee*

Oliverson and Huss Law, PLLC, Tempe
By Jeremy Huss
*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge James B. Morse Jr. delivered the decision of the Court, in which Presiding Judge David D. Weinzweig and Judge Jennifer M. Perkins joined.

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**M O R S E**, Judge:

**¶1** Robert Lindsay Earle appeals his convictions and sentences for (1) fraudulent schemes and artifices and (2) theft. After searching the record and finding no arguable, non-frivolous question of law, Earle'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. Earle has filed a supplemental brief in propria persona. We have considered Earle's supplemental brief and reviewed the record. We affirm Earle's convictions and sentences.

## FACTS AND PROCEDURAL BACKGROUND[1]

**¶2** In June 2010, the victim was attacked at a restaurant and suffered a broken ankle, which required surgery and resulted in medical expenses of over $100,000. Unable to pay his medical bills, the victim sought an attorney in the phone book and found Robert Earle. After a consultation, the victim executed a services agreement with Earle to represent him as plaintiff in a personal injury matter against the restaurant.

**¶3** In November 2015, the restaurant's insurance company issued a settlement check of $33,800 for the victim. After legal fees and costs, the victim was entitled to $14,472.86, subject to an outstanding Medicare lien of $8,986.08. Earle obtained the victim's signature on the check, but held onto the victim's share because of the Medicare lien. When the victim went to Earle's office to inquire about payment, Earle responded, "I have your money" and "you will get it."

**¶4** In November 2016, the parties received notice that the lien was essentially excused, and that any prior payments on the Medicare lien would be reimbursed. But Earle did not disburse any of the $14,472.86 to the victim. Nor did the victim receive a refund check from Medicare. The victim's subsequent attempts to contact Earle produced no response. In September 2017, the victim contacted law enforcement. Two deputies questioned Earle at his residence and, after apparent inconsistencies in Earle's version of events, placed him under arrest.

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[1] We view the facts in the light most favorable to sustaining the judgment and resolve all reasonable inferences against Earle. *See State v. Fontes*, 195 Ariz. 229, 230, ¶ 2 (App. 1998).

**¶5** Earle was charged with (Count 1) fraudulent schemes and artifices, a class two felony and (Count 2) theft, a class three felony. Earle was also disbarred because of the charged events. Prior to trial, the court granted Earle's motion to preclude any evidence of his disbarment. During a two-day jury trial, the victim and one of the arresting deputies testified. Earle did not testify or present any evidence. When asked during cross examination about how the medical liens were released, the victim responded that he wrote letters to the state bar for help and that "I'm the one that got him disbarred." Earle's counsel moved for a mistrial. The judge denied the motion but admonished the jury to disregard the testimony "concerning the disbarment" and ordered it stricken from the record. After closing, Earle's counsel moved for judgment of acquittal under Arizona Rule of Criminal Procedure ("Rule") 20. The court denied the motion, reasoning that the state presented substantial evidence to meet the elements for both counts.

**¶6** The jury found Earle guilty as charged. After the verdict, Earle moved for a new trial citing the victim's testimony of his disbarment. The court denied the motion. At sentencing, the trial court placed Earl on supervised probation for five years. The court also ordered Earle to pay $14,472.86 in restitution to the Client Protection Fund of the Arizona State Bar Association. Earle timely appealed.

## DISCUSSION

**¶7** We review the entire record for fundamental error. *State v. Flores*, 227 Ariz. 509, 512, ¶ 12 (App. 2011). In his pro per supplemental brief, Earle again argues the superior court erroneously denied his motion for a new trial after the jury heard inadmissible testimony about his disbarment.

**¶8** We defer to the superior court's decision on a motion for new trial. *State v. Carpenter*, 141 Ariz. 29, 31 (App. 1984). A new trial is not warranted "based on the erroneous admission of evidence without a reasonable probability that the verdict would have been different had the evidence not been admitted." *State v. Hoskins*, 199 Ariz. 127, 142-43, ¶ 57 (2000) (internal quotation marks omitted). Earle does not point to any additional references to his disbarment and there is no evidence of juror questions or argument about the issue. Moreover, the jury heard substantial direct and circumstantial evidence of Earle's guilt, *see id.* at 143, ¶ 58, and we presume the jury followed the instruction to disregard the stricken testimony, *State v. Jeffrey,* 203 Ariz. 111, 115, ¶ 17-18 (App. 2002). On this record, there is no "reasonable probability" that the victim's

reference to Earle's disbarment had any impact on the jury's verdict. *Hoskins*, 199 Ariz. at 142-43, ¶ 57.

**¶9** Next, Earle argues that he was not competent to stand trial. Earle cannot establish fundamental error. "The critical inquiry is 'whether [the defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding – and whether he has a rational as well as factual understanding of the proceedings against him.'" *State v. Delahanty,* 226 Ariz. 502, 505, ¶ 8 (2011) (quoting *Dusky v. United States,* 362 U.S. 402, 402 (1960).

**¶10** After the trial, Earle was involved in a car accident that resulted in a visit to the emergency room immediately after the accident and subsequent visits over the next three days. The court ordered a mental health evaluation pursuant to Rule 26.5 to determine Earle's present mental status, ability to understand the sentencing proceedings, and assist his counsel at sentencing. Earle contends that this evaluation found him both unable to assist his counsel and understand the proceedings against him – "the [two] prong test for legal competence[.]" To be sure, the evaluation found "neurocognitive decline" and "clinical depression" and it was "likely that [Earle] will be unable to effectively assist counsel during the sentencing phase of this proceeding due to his inability to recall key aspects of his case." But the evaluation did not specifically find that Earle was unable to understand the sentencing proceedings. The evaluation noted that Earle was "highly intelligent and articulate," understood that a Rule 26.5 mental health evaluation was being conducted, and was "engaged and attentive" during the interview. Earle's counsel never moved to have Earle found incompetent and, after receiving the Rule 26.5 report, Earle's counsel affirmatively noted that sentencing could proceed. At sentencing, defense counsel relied on the Earle's emotional and mental decline as mitigation to argue for a lesser sentence.

**¶11** Moreover, the findings only concerned Earle's mental status for purposes of sentencing and do not address his competency at the time of trial. Earle does not point to any evidence demonstrating concern for his competency before or during the trial. *See State v. Amaya-Ruiz*, 166 Ariz. 152, 162 (1990) (noting that a trial judge has a duty *sua sponte* to request a competency evaluation only when "reasonable grounds exist"). To the contrary, Earle was a licensed and practicing attorney for 35 years and the trial record shows Earle participated in his own defense, both identifying a potential conflict of interest with his attorney and speaking directly with the trial judge about his decision not to testify. Accordingly, we find no fundamental error.

**¶12** Earle also alleges judicial bias at the grand jury stage. But this claim is not reviewable on appeal. *State v. Verive*, 128 Ariz. 570, 574–75 (App. 1981) ("We hold that defendant cannot, by appeal from a conviction, obtain review of matters relevant only to the grand jury proceedings that had no effect on the subsequent trial."). Earle also presents a litany of challenges to his separate disbarment proceeding, which we need not address.

**¶13** In addition to evaluating the arguments raised in Earle's supplemental brief, we have conducted an independent review of the record for fundamental error, *see Leon*, 104 Ariz. at 300, and find none. The proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure and the record reveals that counsel represented Earle at all stages of the proceedings. There was sufficient evidence from which the jury could determine, beyond a reasonable doubt, that Earle is guilty of the charged offenses. The jury was properly comprised of 8 members. *See* A.R.S. § 21-102(B). The trial court properly instructed the jury on the presumption of innocence, the burden of proof, and the elements of the charged offenses. The parties waived the presentence report requirement, and Earle was given an opportunity to speak at sentencing. The court stated on the record the evidence and factors it considered in imposing sentence and the sentences imposed were authorized by statute. *See* Ariz. R. Crim. P. 26.9, 26.10. We affirm Earle's convictions and sentences.

Upon the filing of this decision, defense counsel shall inform Earle 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). Earle 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

**¶14** For the foregoing reasons, we affirm.

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