

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

JESSICA LYNNETTE DRESSIG, *Appellant*.

No. 1 CA-CR 20-0441
FILED 5-4-2021

Appeal from the Superior Court in Mohave County
No. S8015CR201601655
The Honorable Derek C. Carlisle, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Linley Wilson
Counsel for Appellee

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

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MEMORANDUM DECISION

Chief Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jennifer B. Campbell and Judge Lawrence F. Winthrop joined.

S W A N N, Chief Judge:

¶1 Jessica Lynnette Dressig appeals from the superior court’s order affirming her convictions and sentences after a remand by this court in *State v. Dressig*, 1 CA-CR 18-0443, 2020 WL 729521 (Ariz. App. Feb. 13, 2020) (mem. decision). Dressig’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, counsel found no arguable question of law that was not frivolous. Dressig was given the opportunity to file a supplemental brief in propria persona but did not do so. After reviewing the record, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In December 2016, law enforcement officers served a search warrant at Dressig’s residence and found large amounts of methamphetamine, heroin, and marijuana, along with various items of drug paraphernalia, including scales and baggies. *Dressig*, 1 CA-CR 18-0443, at *1, ¶¶ 2–3. Dressig was arrested and charged with one count each of possession of dangerous drugs for sale, possession of narcotic drugs for sale, possession of marijuana for sale, and possession of drug paraphernalia. *Id.* at *1–2, ¶¶ 1, 5. After a trial held in absentia, a jury found Dressig guilty as charged. *Id.* at ¶¶ 1, 5–7.

¶3 In Dressig’s first appeal, we issued an order requesting the parties to file supplemental briefs addressing, inter alia, whether Dressig received adequate notice that trial could proceed in her absence, in accordance with Ariz. R. Crim. P. (“Rule”) 9.1. After considering the supplemental briefs, we held that though Dressig had “received ‘actual notice of the date and time of the trial’” under the first element of Rule 9.1, *Dressig*, 1 CA-CR 18-0443, at *5, ¶ 21, the record did not sufficiently demonstrate that the court had informed her that she had the right to be present at trial and that trial could otherwise proceed in her absence, the two remaining elements set forth by the Rule, *id.* at ¶¶ 21–24. We therefore,

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remanded the case to the superior court “for a hearing to determine whether Dressig was adequately informed of her right to be present and that the trial could proceed in her absence if she failed to appear.” *Id.* at *6, ¶ 25.

¶4 On remand, the superior court received briefing on the issue from the parties, then held an evidentiary hearing. At the hearing, Dressig acknowledged that a judge had informed her that she had the right to be present at hearings, that the court could issue a warrant for her arrest if she failed to appear, and that a hearing could go forward in her absence. She further testified that she “did lose contact with [her attorney] for a little while” in the time leading up to the trial because she had moved houses and he did not respond when she tried to contact him. The state introduced into evidence transcripts establishing that Dressig had been informed several times that she had the right to be present at trial and that trial could proceed in her absence. First, at the arraignment, a judge instructed Dressig as follows:

It’s also very important that should you bond out, that you come to court and appear at all future hearings. If you fail to appear, a warrant for your arrest can issue, a trial date could be set, trial can go on without you being present. . . . So it’s very important that you show up.

Second, a judge advised Dressig at a pretrial conference: “[Y]ou now have a trial date, so if you bond out, you would have to be here. If you fail to make it, a warrant for your arrest could issue. The trial could go on without you being present.” Third, a judge repeatedly informed Dressig during the settlement conference that she had the right to proceed to trial.

¶5 The superior court held that Dressig had been “adequately advised of her right to be present and that the trial could go on without her being present if she failed to appear,” and therefore affirmed her convictions and sentences.

DISCUSSION

¶6 We detect no fundamental error. Though criminal defendants have a constitutional right to be present at trial, *State v. Levato*, 186 Ariz. 441, 443 (1996), they may relinquish that right through their voluntary absence, *State v. Garcia-Contreras*, 191 Ariz. 144, 147, ¶ 9 (1998). Rule 9.1 provides that “[t]he [superior] court may infer that a defendant’s absence is voluntary if the defendant had actual notice of the date and time of the proceeding, notice of the right to be present, and notice that the

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proceeding would go forward in the defendant's absence." Once the superior court makes such an inference, the defendant carries the burden to show that his or her absence was involuntary. *State v. Reed*, 196 Ariz. 37, 38-39, ¶¶ 3-4 (App. 1999).

¶7 The record on remand establishes that the superior court repeatedly advised Dressig in pretrial proceedings that she was required to appear for all hearings and that the court could conduct the proceedings, including trial, in her absence. The record further shows that Dressig did not provide in rebuttal sufficient information to demonstrate that her absence was involuntary. Therefore, because all three elements of Rule 9.1 were satisfied, the superior court properly concluded that Dressig had voluntarily waived her right to be present at trial.

¶8 The proceedings on remand complied with the Arizona Rules of Criminal Procedure. Though Dressig was not present at all stages, she was represented by counsel, and the superior court afforded Dressig all her constitutional and statutory rights.

CONCLUSION

¶9 We affirm Dressig's convictions and sentences. Defense counsel's obligations pertaining to Dressig's representation in this appeal have come to end. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Defense counsel must only inform Dressig of the outcome of this appeal and her future options, unless counsel's review discloses an issue appropriate for submission to the Arizona Supreme Court by petition for review. *Id.* Dressig has 30 days from the date of this decision to proceed with a petition for review. Ariz. R. Crim. P. 31.21(b)(2)(A). Upon this court's own motion, Dressig has 30 days from the date of this decision to file a motion for reconsideration. *See* Rule 20(c). A timely motion for reconsideration will extend the deadline to file a petition for review. *See* Rule 31.21(b)(2)(A).



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