IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 07-08-2010
PHILIP G. URRY, CLERK
BY: DN

STATE OF ARIZONA,	)	1 CA-CR 09-0296
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
JOSEPH ERIC LUGO,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-007130-001 DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

Terry Goddard, Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
By Charles R. Krull, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Judge

¶1 Joseph Eric Lugo ("Appellant") appeals his convictions and placement on probation for possession of marijuana for sale and possession of drug paraphernalia. Appellant's counsel has

filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders v. California*, 386 U.S. 738 (1967); and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no reversible error, we affirm Appellant's convictions and placement on probation.

I. FACTS AND PROCEDURAL HISTORY[1]

¶3 On June 25, 2008, a grand jury issued an indictment, charging Appellant with Count I, possession of marijuana for sale, a class four felony in violation of A.R.S. § 13-3405(A)(2)

[1] We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

(2010), and Count II, possession of drug paraphernalia, a class six felony in violation of A.R.S. § 13-3415(A) (2010).[2]

¶4 At trial, the State elicited the following facts: On June 9, 2006, at approximately 7:30 p.m., two undercover Phoenix police officers were patrolling in an unmarked police car near a city park when they noticed Appellant and two other males walking together. The males were sharing what appeared to be a hand-rolled cigarette. As the officers drove up to the sidewalk where the three males had just crossed to enter the park, they smelled the odor of burning marijuana. The officers stopped and exited their vehicle, approached the three males, identified themselves as police officers, and asked the males to stop. After patting down the males, the officers placed one of them under arrest because he possessed some baggies containing a green leafy substance.

¶5 Meanwhile, Appellant consented to a search of the backpack he was wearing. The officers discovered in that backpack numerous clear plastic sandwich baggies and a daily planner with a zip-around pouch that contained eleven individually packaged baggies of a green leafy substance later determined to be marijuana. The baggies of marijuana were rolled up like cigars containing equivalent quantities, and in

[2] We cite the current version of the applicable statutes because no revisions material to our analysis have since occurred.

proportions known as “dime bags” because they typically sell for ten dollars apiece. The total weight of the marijuana was approximately forty-two grams, enough to make approximately 100 to 150 cigarettes.

¶6 Appellant was placed under arrest and advised of his rights pursuant to *Miranda*.[3] He admitted the backpack was his and that he knew there was marijuana in the planner, but he claimed the planner did not belong to him; instead, it belonged to a white male, for whom Appellant could not provide a name or further description. After he had been transported to the police station, Appellant admitted that he had been selling marijuana and that he had intended to sell the marijuana in the planner.

¶7 Appellant testified at trial that when he was arrested in the summer of 2006, he smoked marijuana constantly, “[f]rom when I woke up to when I went to sleep,” but that he currently no longer used the drug. He denied that the planner containing the marijuana belonged to him; instead, he maintained it belonged to his drug dealer. However, he admitted that he had purchased the marijuana in his possession from the dealer. He stated that he lied when questioned about the drug dealer during his arrest because he did not want to be labeled a “snitch.” He further acknowledged that, at the police station after his

[3] *See Miranda v. Arizona*, 384 U.S. 436 (1966).

arrest, he admitted possessing the marijuana for sale, but he claimed that his admission was also a lie that he made up because he was being questioned in an open area in front of his holding cell, and he was concerned that other inmates might believe he was a snitch if he did not admit to being the dealer.

¶8 The jury found Appellant guilty as charged. The trial court suspended sentencing and ordered that Appellant be placed on concurrent terms of three years' probation. Appellant filed a timely notice of appeal.

II. ANALYSIS

¶9 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence presented at trial was substantial and supports the verdicts, and Appellant's placement on probation was within the court's authority. *See* A.R.S. § 13-902(A)(3)-(4) (2010). Appellant was represented by counsel at all stages of the proceedings and was offered the opportunity to speak at the sentencing hearing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶10 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform

Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶11 Appellant's convictions and placement on probation are affirmed.

/S/
LAWRENCE F. WINTHROP, Judge

CONCURRING:

/S/
MAURICE PORTLEY, Presiding Judge

/S/
MARGARET H. DOWNIE, Judge