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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
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IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0351
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
RUBEN RUIZ, JR.,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2008-164264-001 DT

The Honorable Paul J. McMurdie, Judge

AFFIRMED

Terry Goddard, Arizona 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 Louise Stark, Deputy Public Defender
Attorneys for Appellant

D O W N I E, Judge

¶1 Ruben Ruiz, Jr. ("defendant") appeals his conviction
for armed robbery, in violation of Arizona Revised Statutes

("A.R.S.") section 13-1904 (2010).¹ Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has advised that she has thoroughly searched the record and found no arguable question of law and requests that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given the opportunity to file a supplemental brief *in propria persona* but has not done so. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶12 On August 24, 2008, at around 10:30 p.m., J.T. drove into the parking lot of his condominium complex. In his rearview mirror, he saw a van with a man hanging from the door. When J.T. got out of his car, a man, later identified as defendant, stood there with a knife demanding money.

¶13 As J.T. reached for his wallet, another man came from behind and hit him in the head. Defendant hit J.T. in the face. A third man arrived, and J.T. testified "they all started beating me up and pushing me away from the car." One of the men

¹ We cite to the current version of statutes when no revisions material to this decision have occurred.

took his wallet. After the last man ran off, J.T. called the police. Police showed J.T. photo line-ups; he identified defendant as the man with the knife. Defendant's fingerprints were lifted from the windshield and the door frame of J.T.'s car.

¶4 A jury trial ensued. After the State rested, defendant moved for a judgment of acquittal pursuant to Arizona Rule of Criminal Procedure ("Rule") 20. The motion was denied. During deliberations, the jury asked three questions for which defense counsel waived defendant's presence. The first asked how much of defendant's face J.T. saw; the court and counsel agreed to advise the jury to rely on the "collective memories of the evidence presented." The second and third questions asked whether the jury could find defendant guilty based on an accomplice theory. The court and counsel agreed the jury must refer to the final jury instructions.

¶5 The jury found defendant guilty of armed robbery. Defense counsel filed a motion for new trial based on conversations he had with jurors after the verdict that led him to believe they convicted on an accomplice liability theory, not because they believed "beyond a shadow of a doubt" that defendant was "the attacker." The trial court correctly ruled that the juror statements could not be used to impeach the

verdict and denied the motion pursuant to *State v. Cruz*, 218 Ariz. 149, 159, ¶ 33, 181 P.3d 196, 206 (2008).

¶16 At sentencing, the prosecutor requested the presumptive term of 10.5 years' imprisonment. Defendant asked for a mitigated seven-year sentence, arguing "there are no aggravating factors legally in this case in the sense that the State did not put on an aggravation hearing, so it did not submit any for the jury to consider, and thus no aggravating factors can be considered."

¶17 The trial court found three aggravators: physical harm to the victim, presence of accomplices, and a crime motivated by pecuniary gain. The court also considered mitigating factors and found that defendant was a young man with no prior felony convictions and a minimal criminal (juvenile) record. Finding that mitigating factors outweighed aggravators, defendant was sentenced to a slightly mitigated term of 8.5 years, with 211 days' presentence incarceration credit.

DISCUSSION

¶18 We have read and considered the briefs submitted by defense counsel and reviewed the entire record. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. There were no irregularities in the deliberation process.

1. Rule 20 Motion

¶9 The trial court properly denied defendant's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citation omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

¶10 The State presented substantial evidence of guilt, including J.T.'s testimony and physical evidence linking defendant to the crime. Fingerprints lifted from the windshield and door frame of J.T.'s car matched defendant's.

2. Sentencing

¶11 Defendant contends the trial court committed fundamental error and violated his Sixth Amendment rights by imposing a sentence based, in part, on aggravating factors not found by the jury. We disagree.

¶12 "The Sixth Amendment requires that '[o]ther than the fact of a prior conviction, any fact that increases the penalty

for a crime beyond the prescribed statutory maximum must be submitted to a jury[] and proved beyond a reasonable doubt." *State v. Price*, 217 Ariz. 182, 184, ¶ 8, 171 P.3d 1223, 1225 (2007) (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000)). The United States Supreme Court explained that "the relevant 'statutory maximum' is not the maximum sentence a judge may impose after finding additional facts, but the maximum he may impose *without* any additional findings." *Blakely v. Washington*, 542 U.S. 296, 303-04 (2004).

¶13 "Under Arizona's noncapital sentencing statutes, the maximum punishment authorized by a jury verdict alone, without the finding of any additional facts, is the presumptive term." *State v. Johnson*, 210 Ariz. 438, 441, ¶ 10, 111 P.3d 1038, 1041 (App. 2005) (citations omitted). Stated differently, the statutory maximum sentence, in a case in which no aggravating factors have been proven to a jury beyond a reasonable doubt, is the presumptive sentence established by statute. *Price*, 217 Ariz. at 184-85, ¶ 8, 171 P.3d at 1225-26 (citations omitted). When the trial court imposes a sentence that is *less* than the presumptive term, the requirements of *Apprendi* and *Blakely* are not offended. *Johnson*, 210 Ariz. at 441, ¶¶ 9-10, 111 P.3d at 1041; *State v. Miranda-Cabrera*, 209 Ariz. 220, 227-28, ¶ 34, 99 P.3d 35, 42-43 (App. 2004) (finding no Sixth Amendment violation when court weighs non-*Blakely*-compliant aggravator against

mitigating factors and resulting sentence is below the presumptive term).

¶14 Here, the presumptive prison term for armed robbery is 10.5 years. A.R.S. §§ 13-704(A)(dangerous felonies) (2010) and -1904(B). The jury's verdict thus permitted the trial court to impose a 10.5-year sentence without any additional findings of aggravation by the jury. See A.R.S. § 13-704(A). Because the court imposed a slightly mitigated term of 8.5 years, defendant suffered no constitutional violation, and his sentence was proper.

CONCLUSION

¶15 We affirm defendant's conviction and sentence. Counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do nothing more than inform defendant of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154,

156-57 (1984). On the court's own motion, defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/
MARGARET H. DOWNIE, Judge

CONCURRING:

/s/
MAURICE PORTLEY, Presiding Judge

/s/
LAWRENCE F. WINTHROP, Judge