

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 06-29-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,) 1 CA-CR 09-0408
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication - Rule
NATALIE SIMONE BURKE,) 111, Rules of the Arizona
) Supreme Court)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2003-015598-002 DT

The Honorable Glenn M. Davis, Judge

AFFIRMED

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

Yvette C. Gray Phoenix
Attorney for Appellant

N O R R I S, Judge

¶1 Natalie Simone Burke timely appeals from her convictions and sentences. After searching the record on appeal and finding no arguable question of law that was not frivolous, Burke's counsel filed a brief in accordance with *Anders v.*

California, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), asking this court to search the record for fundamental error. This court granted counsel's motion to allow Burke to file a supplemental brief *in propria persona*, but Burke did not do so. After reviewing the entire record, we find no fundamental error and therefore affirm Burke's convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND¹

¶12 Based on evidence of drug activity, police obtained a search warrant for Burke's home. Inside, police found individually wrapped packages of marijuana, more than 100 pounds in total, and other evidence consistent with a drug shipping operation.

¶13 A grand jury indicted Burke for possession of marijuana for sale of four pounds or more, conspiracy to commit sale or transportation of two or more pounds of marijuana, possession of drug paraphernalia, and money laundering in the first degree. A jury convicted Burke on all four counts.² The superior court suspended Burke's sentence, placed her on three

¹We view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Burke. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989).

²On count two, the jury convicted Burke of conspiracy to commit transfer of (sale or transportation of) four or more pounds of marijuana.

years of supervised probation for each count, and imposed 120 days of jail with 86 days credit for time served.

DISCUSSION

¶4 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. Burke received a fair trial. She was represented by counsel at all stages of the proceedings. Although she was not present, due to her own forfeiture, at all critical stages, she was present at her sentencing.³

¶5 The evidence presented at trial was substantial and supports the verdicts. The jury was properly comprised of eight members and the court properly instructed the jury on the elements of the charges, Burke's presumption of innocence, the State's burden of proof, and the necessity of a unanimous verdict. The superior court received and considered a presentence report and Burke was given an opportunity to speak at sentencing. Burke received a more lenient sentence than permitted by statute.⁴

³Burke did not appear for her trial initially scheduled in September 2004 and was tried in absentia on November 15, 2004.

⁴Because of the amount of marijuana involved, Burke was not eligible for a suspended sentence on the possession of marijuana for sale and conspiracy to commit sale or transportation of marijuana charges. See Ariz. Rev. Stat. ("A.R.S.") §§ 13-3405(A)(2), (A)(4), (B)(6), (B)(11), (C) (defendant not eligible for suspended sentence if amount of

CONCLUSION

¶16 We decline to order briefing and affirm Burke's convictions and sentences.

¶17 After the filing of this decision, defense counsel's obligations pertaining to Burke's representation in this appeal have ended. Defense counsel need do no more than inform Burke of the outcome of this appeal and her future options, unless, upon review, counsel finds 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).

drugs in possession or for sale or transport is above threshold amount), -3401(36)(h) (2010) (threshold amount of marijuana is two pounds). (Although A.R.S. § 13-3405 was amended after Burke's offenses, the revision is immaterial. Section 13-3401 was not amended. Thus, we cite to the current version of these statutes.)

The State did not appeal Burke's illegally lenient sentence and therefore, we do not correct it. See *State v. Dawson*, 164 Ariz. 278, 286, 792 P.2d 741, 749 (1990) (absent timely appeal or cross-appeal by State, appellate court has no subject matter jurisdiction to correct illegally lenient sentence).

¶18 Burke has 30 days from the date of this decision to proceed, if she wishes, with an *in propria persona* petition for review. On the court's own motion, we also grant Burke 30 days from the date of this decision to file an *in propria persona* motion for reconsideration.

/s/

PATRICIA K. NORRIS, Presiding Judge

CONCURRING:

/s/

DANIEL A. BARKER, Judge

/s/

PETER B. SWANN, Judge