

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: 06-10-2010
PHILIP G. URRY, CLERK
BY: GH

STATE OF ARIZONA,)
) 1 CA-CR 09-0602
Appellee,)
) DEPARTMENT D
v.)
) MEMORANDUM DECISION
GERALD ALLEN ROSS,)
) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CR 2008-177484-001 SE

The Honorable James T. Blomo, Judge *Pro Tempore*

AFFIRMED

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

James J. Haas, Maricopa County Public Defender
by Cory Engle, Deputy Public Defender
Attorneys for Appellant Phoenix

W E I S B E R G, Judge

¶1 Gerald Allen Ross ("Defendant") appeals from his conviction and sentence imposed after a jury trial. Defendant's

counsel has filed a brief in accordance with *Anders v. California*, 386 U.S. 738, 744 (1967), and *State v. Leon*, 104 Ariz. 297, 299, 451 P.2d 878, 880 (1969), advising this court that after a search of the entire record on appeal, he finds no arguable ground for reversal. This court granted Defendant an opportunity to file a supplemental brief, but none was filed. Counsel now requests that we search the record for fundamental error. *Anders*, 386 U.S. at 744; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Finding no reversible error, we affirm.

¶2 We have jurisdiction pursuant to Arizona Revised Statutes (“A.R.S.”) sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033 (A) (2010).

FACTS

¶3 We view the facts in the light most favorable to sustaining the verdict. See *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). Defendant was charged with unlawful use of means of transportation, a class 5 felony. The State filed allegations pursuant to A.R.S. § 13-702.02 and aggravating circumstances other than prior convictions. The following facts were presented at trial.

¶4 The victim, R., is Defendant’s brother. R. owned a sport utility trailer that he parked at his mother’s house in Mesa. He kept the trailer padlocked. On November 27, 2008, R. visited his mother and noticed that the trailer was missing. Someone had cut

the padlock and removed fencing around the yard in order to gain access to the trailer. No one had permission to remove or use the trailer, including Defendant. R. called the police to report it as stolen.

¶15 The police located the trailer about two weeks later. It was parked at a residence that was two houses away from where Defendant was living, approximately a mile away from where his mother lived. Defendant also had his own trailers parked at that location. R. claimed he had no idea Defendant took the trailer.

¶16 On December 12, 2008, Deputy Maggio of the Maricopa County Sheriff's Office was dispatched to where the trailer was found and made contact with Defendant. When the deputy told Defendant he was recovering stolen property, Defendant said the trailer was not stolen. Defendant told the deputy he had been doing clean-up work at his mother's house and yard and that he had to move the trailer out of the way in order to do so. He admitted he did not have permission to remove or use the trailer and told the deputy that he never said anything to his mother or brother because he "wanted to make them sweat." Contrary to R.'s testimony, Deputy Maggio testified that R. had told another deputy that he had suspected Defendant of removing the trailer. The deputy also stated that R. had told him that he wanted Defendant to go to jail.

¶17 Defendant testified that he has had "heated" conflicts with both his mother and brother. After not seeing his mother for three years, he went to visit her on her birthday, which was November 10, 2008. Defendant saw that her property was in disarray and that she needed help. Defendant said he went to her house to fix and repair the fence and gate, clean the yard, repair water and electrical systems and phone lines and service a swamp cooler. He explained that he had to tear down the fence and remove the trailer in order to do this work. He testified that he did not get permission from R. to remove the trailer because he didn't think he needed his brother's permission. Defendant said that he thought once R. found out that he was helping their mother, R. would think "no big deal [he isn't] going to hurt his trailer."

¶18 Defendant explained why he told the deputy that he wanted his family to "sweat." He said that he had been at his mother's house for Thanksgiving, and she accused him of stealing the trailer. He said that he was "appalled" and upset about the accusation and did not tell her the truth; instead, he merely responded, "Why would I do that?" Defendant stated that he did not call R. to tell him he had taken the trailer, that R. never called him about it, and that he did not know R. had called the police.

¶19 The jury found Defendant guilty of the charge. The court suspended Defendant's sentence and placed him on probation for eighteen months, with two months deferred jail time, and ordered

him to pay restitution in the amount of \$96. Defendant timely appealed.

CONCLUSION

¶10 We have read and considered counsel's brief and have searched the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. So far as the record reveals, Defendant was represented by counsel at all stages of the proceedings, there was sufficient evidence for the jury to find that Defendant committed the offense, and the sentence imposed was within the statutory limits.

¶11 After the filing of this decision, counsel's obligations pertaining to Defendant's representation in this appeal have ended. Counsel need do no more than inform Defendant of the status of the appeal and of Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Defendant has thirty days from the date of this decision to proceed, if he desires, with a motion for reconsideration or petition for review *in propria persona*.

¶12 Accordingly, we affirm Defendant's conviction and sentence.

/S/
SHELDON H. WEISBERG, Judge

CONCURRING:

/S/
MICHAEL J. BROWN, Presiding Judge

/S/
JON W. THOMPSON, Judge