

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



DIVISION ONE
FILED: 09/14/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
)
 Appellee,) 1 CA-CR 09-0690
)
 v.) DEPARTMENT D
)
 RICHARD RANDOLPH ENAS,) MEMORANDUM DECISION
) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
 _____)

Appeal from the Superior Court of Maricopa County

Cause No. CR 2008-125644-001 DT

The Honorable Glenn M. Davis, Judge

AFFIRMED

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

Phoenix

Janelle A. Mc Eachern
Attorney for Appellant

Chandler

W E I S B E R G, Judge

¶1 Richard Randolph Enas ("Defendant") appeals from his convictions following a jury trial and from the sentences imposed. 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, counsel 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). Having done so and 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 AND PROCEDURAL HISTORY

¶3 We review the facts in the light most favorable to sustaining the verdict. *State v. Stroud*, 209 Ariz. 410, 412, ¶ 6, 103 P.3d 912, 914 (2005). Defendant was charged by indictment with theft of means of transportation, a class 3 felony and possession or use of narcotic drugs, a class 4 felony. He was charged in a second indictment with attempted second degree murder, armed robbery, and kidnapping, all class 2 dangerous felonies. The State filed allegations that Defendant had several historical prior felony convictions and that he committed the instant offenses while on release from

confinement. The State also filed an allegation of convictions for multiple offenses not committed on the same occasion pursuant to A.R.S. § 13-702.02. The offenses in each indictment, all of which were committed on the same day, were consolidated for trial. Pursuant to the State's motion, the count for attempted second degree murder was later dismissed as having been improperly charged. The following evidence was presented at trial.

¶4 On April 24, 2008, the victim was at a gas station in Phoenix when two men approached him. One of them put what the victim believed was a knife to his throat and demanded his wallet. After he gave it to them, they forced him into the backseat of his truck. The victim identified Defendant in court as the driver.

¶5 The men told the victim to remove his clothing, except for underwear, and ordered him to close his eyes. At some point, the men switched places and Defendant was in the backseat with the victim. The men made the victim direct them to his bank and reveal his pin number so they could withdraw money from the victim's account. They took the victim's pocket knife and while Defendant was in the backseat, he held the knife at the victim's side and threatened to kill him. The men punched the victim in the face, hit him with a bottle, kicked him in the

head and sliced down his back with the knife. The victim did not recall how he got out of his truck, but next remembered walking through the desert.

¶16 A police officer of the Gila River Police Department found the victim staggering down the road on the Reservation. He was bleeding and had multiple lacerations on his abdomen and chest. The officer called for assistance and paramedics took the victim, who was in serious condition, to the hospital.

¶17 Later on April 24, 2008, Officer Ohland of the Phoenix Police Department responded to a call of an accident involving two trucks. Defendant was the driver of one of the trucks. Because Defendant appeared intoxicated, the officer placed him under arrest. In a search incident to arrest, the officer found a wallet with the victim's insurance card inside.

¶18 Officer Bailey did a registration and license plate check on the vehicles and determined that neither truck belonged to Defendant. The police later learned that Defendant had been driving the victim's truck. The officer searched Defendant and found plastic baggies in one of Defendant's shoe containing a substance the officer believed was heroin. A forensic scientist who tested the substance concluded the baggies contained 1.9 grams of heroin in a useable condition.

¶9 Officer Bartlett prepared a photographic lineup for the victim. The victim identified Defendant as one of the men involved in the crimes and said he was 100 percent positive about the identification. Officer Burton obtained a surveillance photograph of the April 24, 2008 bank transaction which showed a then unidentified male using the victim's credit card.

¶10 Defendant testified at trial and admitted to three prior felony convictions. He said that on the morning of April 24, 2008, two friends came to his house in a truck and he left with them. He testified that when he got into the vehicle, he noticed a pair of pants in the backseat and said he took the wallet out that was in one of the pockets. He further testified that he told his friends that he had an appointment that day and that they lent him the truck.

¶11 Although he told the officer at the scene of the accident that he did not know the vehicle was stolen, at trial, Defendant admitted that he knew it was stolen and that he did not have permission from the victim to use it. He also admitted to possessing heroin, but denied stealing the victim's truck, kidnapping him, taking his money or stabbing him. Despite repeated questioning, Defendant refused to disclose the names of the alleged friends who lent him the truck. He explained that

because he had confessed to two crimes, he would be incarcerated and feared for his safety in prison and the safety of his family if he revealed their identities.

¶12 The jury convicted Defendant of armed robbery (count 2), kidnapping (count 3), both dangerous offenses, theft of means of transportation (count 4) and possession or use of narcotic drugs (count 5). Except for count 5, the jury found as aggravating factors that Defendant committed the crimes for pecuniary gain and that the offenses caused emotional and/or financial harm to the victim. The jury also found that Defendant was on community supervision (parole) at the time he committed the offenses of armed robbery and/or kidnapping.

¶13 The court found that Defendant had at least two historical prior felony convictions and was on parole when he committed the armed robbery and kidnapping. The court found additional aggravating factors beyond those found by the jury. The court sentenced Defendant to aggravated, consecutive twenty-eight-year flat-time prison sentences for armed robbery and kidnapping (counts 2 and 3) and presumptive prison sentences of 11.25 years for theft of means of transportation and 10 years for possession or use of narcotic drugs (counts 4 and 5), those sentences to be served concurrently to each other and to the sentence in count 2, but consecutively to the sentence in count

3. The court did not award presentence incarceration credit because Defendant had not completed his sentence in the matter for which he was on parole and was therefore not in custody pursuant to the instant offenses. Defendant filed a timely notice of appeal.

CONCLUSION

¶14 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, and the sentences imposed were within the statutory limits and that there was sufficient evidence for the jury to find that the offenses were committed by Defendant.

¶15 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*. Accordingly, we affirm Defendant's convictions and sentences.

/s/ _____
SHELDON H. WEISBERG, Judge

CONCURRING:

/s/ _____
MICHAEL J. BROWN, Presiding Judge

/s/ _____
JON W. THOMPSON, Judge