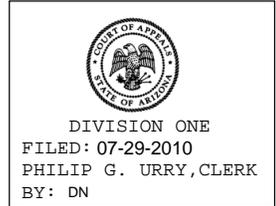


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 09-0826
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
ROBERT STUART REED,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court
)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-006893-001 DT

The Honorable Carolyn K. Passamonte, Judge *Pro Tempore*

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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Robert Stuart Reed appeals from his convictions and sentences for one count of arson of an occupied structure, a

class two dangerous felony; one count of fraudulent insurance claim, a class five felony; and twelve counts of endangerment, class six felonies. Reed'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), advising this court that after searching the entire record on appeal, he finds no arguable ground for reversal. We granted Reed leave to file a supplemental brief *in propria persona* on or before June 21, 2010, but he failed to do so.

¶2 We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶3 Reed's one-year lease at Cotton Center Townhomes began on March 1, 2007. Shortly after Reed moved in he went into the leasing office and indicated he wanted to get out of his lease. Reed only paid a portion of his April rent, and the management company initiated forcible detainer proceedings. On April 18,

¹ We view the facts in the light most favorable to sustaining the court's judgment and resolve all inferences against Reed. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998); *State v. Moore*, 183 Ariz. 183, 186, 901 P.2d 1213, 1216 (App. 1995).

2007, Reed obtained a renter's insurance policy from Travelers Insurance Company effective April 19. Around 5:00 a.m. on April 28, 2007, the Phoenix Fire Department was dispatched to Reed's townhome for a fire. Reed told an investigator that he was sleeping on the first floor the night of the fire when his cat woke him up. He grabbed his cat and a duffle bag and drove to a Chevron gas station to call 9-1-1 because his cell phone was not working. On April 30, 2007, Travelers Insurance gave Reed a \$500 advance for things he would need within the first few days of the fire.

¶14 The fire investigator testified that there was "substantial risk of imminent death of the occupants of the other townhomes" by smoke inhalation or fire communicating to the other units. O.H. testified that she lived next door to Reed and her townhome shared a wall with Reed's townhome. On the night of the fire, seven people, including O.H., were staying in her apartment. T.L. testified that her townhome adjoined Reed's townhome. The morning of the fire there were five people in her townhome sleeping. T.L. also testified that she saw Reed moving things out of his apartment into a Budget truck a week before the fire and only a short time after he moved in.

¶15 The fire investigator testified that the fire had two points of origin because there was not enough heat damage coming

down the stairwell from the second floor to ignite the fire on the first floor. He suspected arson because the fire had more than one point of origin, and this means "someone intentionally lit both or one of those fires." The investigation ruled out electrical causes for either of the two fires. It was also suspicious that the batteries in the smoke detectors had been checked and replaced shortly before the fire, but investigators could not find any batteries. Travelers Insurance denied Reed's claim and did not make any other payments because Travelers Insurance felt the fire had been intentionally set. Reed admitted in an interview with the fire investigator that after he discovered the fire upstairs he lit a cardboard box on fire downstairs with a long lighter in order to cause enough damage in the apartment to eliminate being able to stay there.

¶16 Reed was charged with arson of an occupied structure, a class two felony (count 1); a fraudulent insurance claim, a class five felony (count 2); and twelve counts of endangerment, class six felonies (counts 3 through 14). Reed rejected the State's plea offer, and his case proceeded to trial. Reed did not appear for the trial, but was represented by counsel at all times. When Reed did not appear for trial Defense counsel asked for a continuance. Defense counsel left a number of messages for Reed, but had not received any contact from Reed and did not know his situation. On the second day of trial Reed was not

present, and the trial court granted the State's motion to proceed in absentia.

¶17 The jury heard testimony from two fire investigators, two neighbors, a contents specialist for Travelers Insurance, the maintenance man for Cotton Center Townhomes, and the leasing agent for Cotton Center Townhomes. Both fire investigators testified that the fire had two origins and that one or both of the fires was started intentionally by human hands. The State played a recording of an interview Reed had with a fire investigator in which he admitted starting the downstairs fire. Both neighbors testified to the number of people in their townhomes the morning of the fire. After the State rested, the defense did not present any evidence. The court denied defense counsel's request to dismiss the dangerous allegation on count 1.

¶18 At the conclusion of trial, the twelve-member jury found Reed guilty of all charges. The jury further found that arson of an occupied structure (count 1) was a dangerous offense. At sentencing, the trial court provided Reed an opportunity to speak and then ordered a presumptive term of 10.5 years of imprisonment on count 1, and presumptive terms of 1 year of imprisonment on counts 3 through 14. The court ordered all sentences to run concurrently. The trial court credited Reed with 61 days of presentence incarceration credit on counts

1 and 3 through 14. Reed received probation on count 2. Reed was ordered to pay \$15,850 in restitution on count 1 and a fine of \$72,000 on count 2.

Disposition

¶9 At trial, the State presented evidence of Reed's interview with the fire investigator. Although no hearing was held to determine the voluntariness of Reed's statements to the investigator, Reed neither requested a voluntariness hearing nor objected to the evidence at trial. There was no evidence or claim that the statements were involuntary, and the trial court was not required to *sua sponte* raise the issue. *State v. Alvarado*, 121 Ariz. 485, 487-88, 591 P.2d 973, 975-76 (1979). Therefore, a voluntariness hearing was not required. *See State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

¶10 We have reviewed the entirety of the record and found no meritorious grounds for reversal of Reed's convictions or for modification of the sentences imposed. *See Anders*, 386 U.S. at 744; *Leon*, 104 Ariz. at 300, 451 P.2d at 881. After the filing of this decision, counsel's obligations in this appeal have ended subject to the following. Counsel need do no more than inform Reed of the status of the appeal and Reed's 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). Reed 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.

/s/

DANIEL A. BARKER, Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Presiding Judge

/s/

LAWRENCE F. WINTHROP, Judge