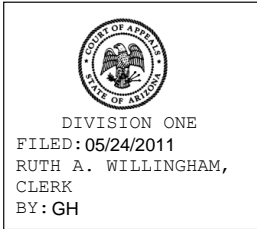


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 09-0854
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JAMES EDWARD PENNINGTON,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-122870-001 DT

The Honorable F. Pendleton Gaines III, Judge (Deceased)

AFFIRMED

Thomas C. Horne, 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 Eleanor S. Terpstra, Deputy Public Defender
Attorney for Appellant

D O W N I E, Judge

¶1 Relying on *Anders v. California*, 386 U.S. 738 (1967),
and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), James
Edward Pennington ("defendant") appeals his convictions for

possession of marijuana, aggravated assault, and resisting arrest. Defense counsel has searched the record, found no arguable question of law, and asked 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 he has not done so. On appeal, we view the evidence in the light most favorable to sustaining the convictions. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

FACTS AND PROCEDURAL HISTORY

¶12 In April 2009, Officers Whitchurch and Sylvestre were on patrol in a marked police vehicle, wearing police uniforms. They saw defendant with a lit cigarette in his hand and smelled the odor of marijuana. The officers reported to dispatch that they were conducting a stop and requested a "slow roll," where backup was asked to arrive "at a faster pace."

¶13 Pursuant to Officer Sylvestre's direction, defendant dropped the cigarette. Officer Sylvestre told defendant to sit near the front of the police vehicle while he awaited backup. Defendant put his right hand inside the front pocket of his sweatshirt. The officer asked him to remove his hand, and defendant complied. However, he immediately placed his hand back inside the sweatshirt pocket.

¶14 Following defendant's furtive actions, and due to safety concerns, Officer Sylvestre ordered defendant to stand and place his hands on his head for a pat-down search. Defendant put his left hand to his ear and began to raise his right hand, but then placed it back inside the sweatshirt pocket. Officer Sylvestre unsuccessfully tried to remove the hand. He then grabbed defendant around the waist. Defendant took his hand from the pocket, elbowed the officer in the face, and threw two objects. One object landed where a baggie containing 19 grams of marijuana was later seized; the other landed where a baggie containing 6.1 grams of crack cocaine was located.¹ Officer Sylvestre "escorted [defendant] to the ground." Defendant "got on to all fours" and tried to stand. Officer Sylvestre struck defendant in the leg three times and was then able to handcuff him.

¶15 Repeatedly during the encounter, the officers advised defendant he was under arrest and ordered him to stop resisting. During the incident, Officer Sylvestre's finger was cut, and he sustained a bruise on his temple near his eye.

¹ The jury could not reach a verdict regarding count 1, the possession of narcotic drugs charge. Post-trial, the State dismissed that charge.

DISCUSSION

¶16 In keeping with an *Anders* review, we have read and considered the brief submitted by defense counsel and have 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. Defendant was represented by counsel at all critical phases of the proceedings. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶17 Evidence presented at trial was sufficient to defeat 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) (citations 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) (citation omitted).

¶18 Necessary elements of each charged offense were proven at trial. The evidence included photographs of Officer Sylvestre's injuries, testimony regarding defendant's resistance to the arrest, and scientific evidence identifying the marijuana recovered from the scene. Substantial evidence supported the convictions.

CONCLUSION

¶19 Defendant's convictions and sentences are affirmed. 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/

DANIEL A. BARKER, Presiding Judge

 /s/

MICHAEL J. BROWN, Judge