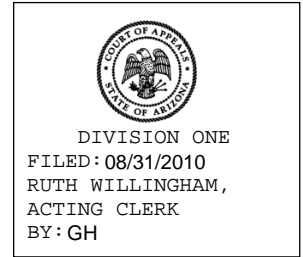


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) 1 CA-CR 10-0036
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
)
JOSE AUGUSTO BAHENA,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-138948-002DT

The Honorable Edward O. Burke, Judge

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 Thomas Baird, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Jose Augusto Bahena appeals from his conviction and sentence for one count of burglary in the third degree, a class

four felony. Bahena'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 Bahena leave to file a supplemental brief *in propria persona* on or before August 16, 2010, but he did not do so. We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶2 In the early morning of June 11, 2009, police responded to a call about a burglary in progress. They were called to Reyna Michoacana, a general store that sold ice cream and popsicles, handbags and cell-phones, and had coin-operated games. Officers arrived and found Bahena sitting in the driver's seat of a car parked on the street in front of the store. When asked what he was doing, Bahena told the officers he was waiting for a friend who was in the park across the street. Bahena was detained while officers entered the store.

¶3 The store appeared to have been ransacked: kitchen utensils were on the floor, the freezer door was ajar, the coin-

¹ We view the facts in the light most favorable to sustaining the court's judgment and resolve all inferences against Bahena. *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).

operated games were broken-into, and there was a hole in the ceiling. Once inside the store, officers saw two individuals carrying television sets. Upon seeing the officers, one individual dropped the television set he was carrying, the other set his down, and both put their hands up. Officers detained both individuals.

¶14 After the officers searched the individuals, they found fifteen quarters, a cordless handset to a phone, and a screwdriver. Officers searched Bahena and found forty-seven quarters in his pocket. The car in which Bahena was sitting contained a display rack of tortilla chips in the front passenger seat and a number of women's purses in the back seat. After an officer read Bahena his *Miranda* rights, Bahena told the officer that he was stealing because it was a bad economy. Bahena was indicted and charged with one count of burglary in the third degree, a class four felony.

¶15 At trial, Bahena was identified as the individual found sitting in the car. The owner of Reyna Michoacana testified that the chip rack, the chips, and the purses found in the car with Bahena were from the burglarized store. The jury found Bahena guilty of burglary in the third degree, and the jury separately found the aggravating circumstance that Bahena had committed the offense in the expectation of pecuniary gain.

¶16 At sentencing, the court gave Bahena an opportunity to speak. Pursuant to the recommendation of the presentence report, the court suspended imposition of sentence and placed Bahena on supervised probation for eighteen months. Bahena timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010).

Disposition

¶17 At trial, the State presented evidence of Bahena's statements to the officer. Although no hearing was held to determine the voluntariness of Bahena's statements to the officer, Bahena neither requested a voluntariness hearing nor objected to the evidence at trial. There was no evidence that the statements were involuntary, and the defense never requested a voluntariness hearing. See *State v. Alvarado*, 121 Ariz. 485, 487, 591 P.2d 973, 975 (1979) ("[I]t is the defendant who must move for a voluntariness hearing"). Therefore, a voluntariness hearing was not required. See *State v. Peats*, 106 Ariz. 254, 257, 475 P.2d 238, 241 (1970).

¶18 We have reviewed the entirety of the record and found no meritorious grounds for reversal of Bahena's conviction or for modification of the sentence 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. Unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review, counsel need do no more than inform Bahena of the status of the appeal and Bahena's future options. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Bahena 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