

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: 09/23/2010
RUTH WILLINGHAM,
ACTING CLERK
BY: GH

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 10-0165
)
Appellee,) DEPARTMENT A
)
v.) MEMORANDUM DECISION
)
ROBERT GALVAN,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)
)
)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-134252-001 DT

The Honorable James T. Blomo, 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 Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

B A R K E R, Judge

¶1 Robert Galvan ("Galvan") appeals from his conviction and sentence for one count of Possession of Narcotic Drugs for Sale (crack cocaine), a Class 2 felony having a weight or value that exceeds the statutory threshold amount; one count of Possession of Dangerous Drugs for Sale (methamphetamine), a Class 2 felony; and one count of Possession of Drug Paraphernalia (syringe(s), baggies), a Class 6 felony. Galvan was sentenced on February 17, 2010 and timely filed a notice of appeal on February 19, 2010. Galvan'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 Galvan leave to file a supplemental brief *in propria persona* on or before August 30, 2010, and he did not 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 (2001), and 13-4033(A) (2001). We are required to search the record for reversible error. Finding no such error, we affirm.

Facts and Procedural Background¹

¶13 In May 2009, police received a tip from an informant that a man named Robert was selling drugs from a house on West Moreland Street in Phoenix. Police later confirmed that the defendant, Robert Galvan, lived at that address. On May 21, 2009, police established undercover surveillance outside the house. During their limited surveillance, detectives observed visitor activity at the house, including a woman who knocked on the front door, entered the house for only a short period, and then left with Galvan.

¶14 Detective S. observed Galvan and the woman depart from the property driving a truck. Knowing that Galvan's license had been suspended, Detective S. followed the truck. When Galvan returned to his driveway, Detective S. conducted a traffic stop. As he approached the truck, Galvan stuck his hands out the window and said that he didn't have anything on him. Detective S. placed Galvan under arrest and informed Galvan that he was part of a drug investigation and that other officers were obtaining a search warrant for Galvan's house.

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

¶15 At 3:00 p.m. the search warrant was authorized and officers conducted a search of Galvan's house and found (1) a false beer can behind the kitchen stove that contained 6.8 grams of crack cocaine and 650 milligrams of methamphetamines in approximately 50 small baggies; (2) 110 milligrams of heroine in a small plastic baggie on the floor of the living room; (3) a bag of between 50 and 100 small baggies in the master bedroom; (4) syringes still in their original packaging in the master bedroom; and (5) personal letters addressed to Robert Galvan at that address in the master bedroom. The 6.8 grams of crack cocaine found in the house exceeded the statutory threshold amount of 750 milligrams.

¶16 Following the search, Detective S. read Galvan his *Miranda* rights and asked him questions. Galvan admitted that he had lived in the house for the past four months, that he owned it, and that he slept in the master bedroom. There was also evidence establishing that Galvan lived in the house alone. When Detective S. asked Galvan if he was allowing someone else or if someone else was selling drugs from his house, Galvan said no. When asked if police would find his fingerprints or DNA on the drugs/drug containers found in the house, Galvan said he was not sure.

¶17 Galvan told police that he was unemployed and had been unemployed for a couple of months. Police searched Galvan and

found cash in both of Galvan's front pockets and in his wallet. Detective S. testified at trial that drug dealers frequently separate cash on their person to differentiate cash for buys, cash from sales, and cash for personal use. When asked where the money had come from, Galvan had no explanation.

¶18 At trial, Detective D. testified that in his experience, the high quantity of drugs in the house, the variety of drugs, and the packaging of the drugs - such as the \$10-\$20 quantities of crack cocaine individually packaged into small baggies found in the false beer can - all indicated that the drugs were intended solely for sale and not for personal use.

¶19 The jury found the defendant guilty of (1) one count of Possession for Sale of Narcotic Drugs (crack cocaine), having a weight or value that exceeds the statutory threshold amount, a Class 2 felony; (2) one count of Possession of Dangerous Drugs for Sale (methamphetamine), a Class 2 felony; and (3) one count of Possession of Drug Paraphernalia (syringe(s), baggies), a Class 6 felony.

¶10 After a trial on priors, the trial court found the existence of two prior felony convictions, both of which could be used for enhancement. The judge sentenced Galvan to the presumptive term of 15.75 years for Possession of Narcotic Drugs for Sale, 15.75 years for Possession of Dangerous Drugs for

Sale, and 3.75 years for Possession of Drug Paraphernalia, all to run concurrently.

Disposition

¶11 We have reviewed the record and have found no meritorious grounds for reversal of Galvan'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. Galvan was present at all critical stages of the proceedings and was represented by counsel. All proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure.

¶12 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 Galvan of the status of the appeal and Galvan'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). Galvan 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/

/s/

DONN KESSLER, Presiding Judge

JON W. THOMPSON, Judge