DIVISION ONE
FILED: 07/12/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 10-0523
	)	
Appellee,	)	DEPARTMENT A
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
JOSEPH KEN COTTEN,	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
Appellant.	)	
	)	

Appeal from the Superior Court in Mohave County

Cause No. CR 2009-1244

The Honorable Rick A. Williams, Judge

AFFIRMED

Thomas C. Horne, Arizona Attorney General — Phoenix
By Kent E. Cattani, Chief Counsel
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

Jill L. Evans, Mohave County Appellate Defender — Kingman
Attorney for Appellant

D O W N I E, Judge

¶1 Joseph Ken Cotten ("defendant") appeals his conviction for promoting prison contraband, a class 5 felony, in violation

of Arizona Revised Statutes ("A.R.S.") section 13-2505. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and requests 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 conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

FACTS AND PROCEDURAL HISTORY

¶2 On November 18, 2009, defendant was standing trial in a Mohave County courtroom. During a court recess, after defendant's girlfriend threw something at defendant, a corrections officer told defendant to spit the object out; defendant instead clenched his teeth and jaw. He told the corrections officer he had swallowed it. After the officer walked away, defendant removed the object from his mouth and tried to shove it down his pants.

¶3 Corrections officers searched defendant, but found nothing. Deputy Morrison asked defendant "where the item was at." Defendant responded that he "didn't have it and that he ditched it." After court ended for the day, officers again

searched defendant, but found nothing. They placed defendant in a solitary dry cell, where he could not flush any contraband down the toilet. Deputy Director Brown testified he saw defendant sprinkle a substance in the toilet. When officers returned to the cell, they found tobacco in the toilet.

¶4 Defendant was indicted for one count of promoting prison contraband, a class 5 felony. A jury trial ensued. After the State's case-in-chief, defendant moved for a directed verdict pursuant to Rule 20, Arizona Rules of Criminal Procedure. The court denied the motion. The jury found defendant guilty. Before sentencing, defendant stipulated to having two prior felony convictions. The court sentenced defendant to a slightly mitigated consecutive sentence of 4.5 years. This timely appeal followed.

DISCUSSION

¶5 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. 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 offense charged. The record reflects no irregularity in the deliberation process.

¶6 The trial court properly denied 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).

¶7 The State presented substantial evidence of guilt, including eyewitnesses to the offense, video of the incident, photographs of the tobacco, and incriminating statements made by defendant. Although the officers did not test, smell, or collect the substance, Officer Kitchen testified it "was very, very obvious it was tobacco," based on his experience with loose leaf tobacco at the jail. Evidence was presented that tobacco is prohibited at the jail and is considered contraband because it can be used as a commodity to "strong arm" other inmates.

Based on the evidence presented at trial, a reasonable jury could have found defendant guilty of the charged offense.

CONCLUSION

¶8 We affirm defendant's conviction and sentence. 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/
DIANE M. JOHNSEN, Presiding Judge

/s/
JON W. THOMPSON, Judge