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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: 07/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,)
)
) 1 CA-CR 10-0524
)
) DEPARTMENT A
)
) Appellee,)
)
) **MEMORANDUM DECISION**
)
) v.)
) (Not for Publication -
) Rule 111, Rules of the
) Arizona Supreme Court)
)
) JIMMIE LEE FORD,)
)
) Appellant.)
)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2008-006114-001DT

The Honorable Maria Del Mar Verdin, Judge

AFFIRMED

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

Ballecer & Segal Phoenix
By Natalee E. Segal
Attorneys for Appellant

J O H N S E N, Judge

¶1 This appeal was filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969), following the superior court's order requiring Jimmie Lee Ford to pay \$20,000 in restitution to the Maricopa County Attorney's Victim Compensation Bureau. Ford's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Ford filed a supplemental brief, raising issues that we address below. His counsel asks this court to search the record for fundamental error. After reviewing the entire record, we affirm the restitution order.

FACTS AND PROCEDURAL HISTORY

¶2 A jury convicted Ford of two counts of aggravated assault, one count of possession of marijuana and one count of possession of narcotic drugs. The court later conducted a restitution hearing at which a representative from the Victim Compensation Bureau testified that on behalf of the bureau, he had verified and disbursed \$20,000 in restitution to B.R., Ford's victim. The \$20,000 compensated B.R. for lost wages and for rental of a wheelchair. The court admitted in evidence copies of the bureau's written disbursements and supporting documentation. At the conclusion of the hearing, the court ordered Ford to pay the Victim Compensation Bureau \$20,000 in restitution.

¶13 We have jurisdiction of Ford's appeal from the restitution order 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)(1) (2010).¹

DISCUSSION

A. Fundamental Error Review.

¶14 The record reflects Ford received a fair hearing. He was represented by counsel during the restitution proceedings and was present for the hearing at which the court received evidence and ruled on restitution. The State presented direct evidence sufficient to support the court's order of restitution. The court considered Ford's testimony, the Victim Compensation Bureau representative's testimony and the documentation evidencing payments the bureau made to B.R. The court issued a legal restitution order based on the crimes of which Ford was convicted. See A.R.S. § 13-603(C) (2010) ("If a person is convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss as determined by the court . . .").

¹ Absent material revisions after the date of an alleged offense, we cite a statute's current version.

B. Issues Raised by Ford.

¶15 Ford argues he was absent during trial of the charges against him and that the initial charges against him were dismissed prior to his convictions. By memorandum decision issued July 13, 2010, this court already has affirmed Ford's convictions. Because this appeal is only from the restitution order, we will not consider issues Ford raises concerning his convictions.

¶16 Ford also generally challenges the admissibility of evidence presented at his restitution hearing and argues the evidence was insufficient to establish that B.R. suffered economic loss.

¶17 Ford did not object to any testimony at the hearing; nor did he object to admission of the exhibit about which the Victim Compensation Bureau representative testified. On appeal, he does not identify what evidence he contends constitutes hearsay. The representative testified the exhibit contained checks that he himself distributed to B.R. The representative testified that the exhibit contained business records that he keeps in the ordinary course of his business. On voir dire, the witness testified that he contacted the person that B.R. identified as his employer "to confirm that the information on that form [the exhibit] was correct." The witness acknowledged,

however, that he did not check B.R.'s tax returns to verify lost wages.

¶18 Based on our review of the hearing transcript, we do not discern that any of the representative's testimony constituted inadmissible hearsay. To the extent that Ford for the first time on appeal challenges admission of the exhibit based on hearsay grounds, we review for fundamental error. *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005).

¶19 Fundamental error review requires the defendant to establish that fundamental error occurred and that it caused him prejudice. *Id.* at ¶ 20. Ford cannot satisfy this standard because he cannot show that admission of the exhibit prejudiced him. To the extent that the exhibit contained checks distributed to B.R. and information regarding B.R.'s employment status, it was cumulative because the bureau representative testified that he distributed the checks to B.R. and contacted B.R.'s previous employer by telephone to verify the information regarding his employment.

¶10 Ford's real argument seems to be that B.R. was not entitled to compensation for wage loss because he was not actually employed prior to the assault. During the restitution hearing, Ford testified B.R. was acting as a caretaker at a

construction site. The victim had no regular employment, Ford said; rather, the owner of the site "would throw him money every now and then." He also urged that Social Security records be checked to confirm the lost wage claim.

¶11 It is the role of the superior court, not the court of appeals, to weigh the credibility of witnesses. *State v. Lewis*, 224 Ariz. 512, 516, ¶ 21, 233 P.3d 625, 629 (App. 2010) (quoting *State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995)). Having heard the evidence, the superior court found that the Victim Compensation Bureau had reimbursed B.R. for \$20,000 in lost wages and medical expense, and substantial evidence exists in the record to support that finding. Although Ford argues that the manner in which the hearing was conducted ran afoul of the Fifth and Sixth Amendments, he was provided the opportunity to testify and present evidence to refute the bureau's testimony. He was not denied due process.

¶12 Finally, Ford argues his counsel was ineffective. A claim of ineffective assistance of counsel may not be reviewed on direct appeal. *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002) (ineffective assistance of counsel claims must be raised in Arizona Rule of Criminal Procedure 32 proceedings). We therefore do not reach the merits of Ford's argument that his counsel was ineffective.

CONCLUSION

¶13 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶14 After the filing of this decision, defense counsel's obligations in this appeal have ended. Defense counsel need do no more than inform Ford of the outcome of this appeal and his future options, unless, upon review, counsel finds "an issue appropriate for submission" to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Ford has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Ford has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

MARGARET H. DOWNIE, Judge

/s/

JON W. THOMPSON, Judge