

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: 08/04/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0592
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
COREY ALAN BUTLER,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-136484-001Dt

The Honorable Joseph C. Welty, Judge

AFFIRMED

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

Maricopa County Public Defender's Office Phoenix
By Kathryn L. Petroff, Deputy Public Defender
Attorneys for Appellant

G E M M I L L, Judge

¶1 Butler appeals from his convictions for burglary in the second degree and threatening or intimidating. Butler's counsel filed a brief in compliance with *Anders v. California*,

386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Butler was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 In June 2009, Butler was indicted on count one, burglary in the second degree, a class 3 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1507 (2010),¹ and count two, threatening or intimidating, a class 1 misdemeanor, in violation of A.R.S. § 13-1202 (2010).

¶3 Butler moved for a Rule 11 competency evaluation. See Ariz. R. Crim. P. 11. In September 2009, the court conducted a Rule 11 competency hearing and appointed three experts to conduct a competency evaluation. After reviewing the experts' reports, the court found Butler to be competent to stand trial.

¶4 Butler filed several motions: for a Dessureault hearing, to sever, to dismiss, for an order that the State cross-reference DNA results through DNA index systems, and for release. The court denied the motion to sever in February 2010.

¹ We cite to the current version of the applicable statute because no revisions material to this decision have since occurred.

In May 2010, the court conducted a Dessureault hearing and denied the motion to preclude the identification of the defendant by the victim. The court also heard arguments on the other pending motions and then denied the motion for release, motion to dismiss, and motion for order that the State cross-reference the DNA results.

¶15 A four-day trial commenced in May 2010. "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001). The following evidence was presented at Butler's trial.

¶16 On June 1, 2009, at around 11:00 a.m., the victim saw two young men walking down the street near her home. She locked her front door, left to run errands, and returned approximately fifteen minutes later. When she returned home, she got out of her car and immediately saw a soda can in the front porch area. The victim also noticed that the front wooden door and the screen door were open. She walked into the house and saw that "things were thrown out of the closet and in the living room" and "[t]here was a mess." The victim ran outside and saw two men, one carrying a pillowcase, running out of the side door of the house. The victim recognized the two men as the men she saw earlier on her street. She chased after Butler, but unable to reach him, she returned home and called the police. The police

arrived at the home and interviewed the victim. She described the first suspect, Butler, as being tall and thin, with brown hair, and wearing a white shirt and dark pants; she described the second suspect as being shorter than Butler, chubbier, and wearing dark clothes. The victim discovered that jewelry, a jewelry box, and speakers were missing. After the officers left the victim's home, they returned approximately thirty minutes later and notified her that they had located an individual that matched her description. The officers drove the victim to a nearby intersection where she identified an individual, standing on the street next to police officers, as one of the males who ran out of her house earlier that day. At trial, the victim identified Butler as the person she saw running out of her home and the person she identified on the street with police.

¶17 Phoenix Police Officer S. responded to the victim's home the day of the burglary. Officer S. testified that the victim described the first suspect as a white male, slender build, 5'7 to 6' in height, with sandy blonde to brown hair, and wearing a white t-shirt and dark pants. The victim also described the second suspect as a white male, but shorter in height than the first suspect, wearing dark clothes, and with a "chunky" build. Officer S. relayed the description to the other officers in the area and left the victim's home. Approximately forty to forty-five minutes after the initial 911 call, Officer

S. returned to the victim's home, and picked her up, because he had been notified that officers had located a possible suspect. Officer S. testified that he generally instructed crime victims, as he did the victim in this case, that:

the person or persons that you are going to look at may or may not be involved with what has happened. As far as like this crime, with your residence today, it's especially important to keep people who are innocent out of jail as it is to put the guilty that are in jail. So you need to be positive on your identification, and take your time, to ascertain an identification.

¶18 Phoenix Police Officer L. also testified. She was on duty the day of the burglary, and located the suspect after receiving a call reporting a suspicious person on a bike. Officer L. testified that, during the one-on-one identification of Butler by the victim, Butler stated, "The old lady with the sunglasses can't see shit." The officer believed this to be "odd" because she could not "make out what anybody even in the vehicle would look like." Officer L. further testified, later that same day, Butler stated "I recognize the old lady. Maybe I will go visit her again." Butler also stated that "people like her will burn in hell."

¶19 On the third day of trial, at the close of the State's case-in-chief, Butler moved for a directed verdict, which the court denied.

¶10 The jury found Butler guilty on both counts. Butler

agreed to waive a jury determination of aggravating circumstances, and he agreed to stipulate to the aggravating factor that the victim was over 65 years of age at the time of the offense. The court also found the aggravating factor that an accomplice was present at least for the burglary and the crime was committed for pecuniary gain. The court suspended imposition of sentence and placed Butler on three years' probation for count one and three years' probation for count two, to be served concurrently. As a condition of Butler's probation, the court imposed a deferred jail sentence of twelve months, with zero days of presentence incarceration credit, but the court stated that it could be deferred further, or eliminated completely, if Butler behaved while on probation. The court further ordered Butler to pay the victim \$1,360, payable in \$70 minimum per month installments.

¶11 Butler timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21 (2003), 13-4031 (2010), and 13-4033 (2010).

DISCUSSION

¶12 Having considered defense counsel's brief and examined the record for reversible error, *see Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentences imposed fall within the range permitted by law, and the evidence presented supports

the convictions. As far as the record reveals, Butler was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶13 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Butler of the disposition 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. Butler has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶14 The conviction and sentence are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICK IRVINE, Presiding Judge

_____/s/_____
PHILIP HALL, Judge