

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



DIVISION ONE
FILED: 09/15/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

**IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE**

STATE OF ARIZONA,

Appellee,

v.

MARCOS GUILLERMO CARLYLE,

Appellant.

1 CA-CR 10-0748

DEPARTMENT D

MEMORANDUM DECISION

(Not for Publication -
Rule 111, Rules of the
Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-164389-001 DT

The Honorable Cari A. Harrison, Judge

AFFIRMED

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

Phoenix

Maricopa County Public Defender
By Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

Phoenix

I R V I N E, Presiding Judge

¶1 This appeal is filed in accordance with *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Marcos Guillermo Carlyle

asks this Court to search the record for fundamental error. Carlyle was given an opportunity to file a supplemental brief in propria persona. Carlyle has not done so. After reviewing the record, we affirm his convictions and sentences for burglary in the second degree and possession of burglary tools.

FACTS AND PROCEDURAL HISTORY

¶2 We view the facts in the light most favorable to sustaining the trial court's judgment and resolve all reasonable inferences against Carlyle. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998). Carlyle and three others entered a vacant house and proceeded to tear copper pipes from the walls using a hammer. A neighbor heard loud banging and called the police. Carlyle was caught climbing out the window. After police read him his *Miranda* rights, Carlyle admitted that he entered the house intending to take the copper pipes to sell as scrap metal. The owner of the home testified Carlyle did not have permission to do so.

¶3 The State charged Carlyle with burglary in the second degree, a class 3 felony (Count 1), and possession of burglary tools, a class 6 felony (Count 2). Despite prior notices and several continuances, Carlyle failed to appear and the trial was conducted in absentia. At the close of the evidence, the trial court properly instructed the jury on the elements of the offenses. It also instructed the jury not to speculate as to why

Carlyle did not appear or to hold that as evidence of guilt. Carlyle was convicted as charged. The jury found that Carlyle had accomplices and committed the offenses for pecuniary gain.

¶4 The trial court conducted the sentencing hearing in compliance with Carlyle's constitutional rights and Rule 26 of the Arizona Rules of Criminal Procedure. Through fingerprint evidence and witness testimony, the State proved that Carlyle had three historical priors for sentencing purposes. The State also proved that Carlyle was on probation at the time of the offenses. The trial court sentenced Carlyle to presumptive prison terms of 11.25 years for Count 1 and 3.75 years for Count 2, to be served concurrently, with credit for 212 days of presentence incarceration. The trial court also imposed restitution in the amount of \$9077.55. For the probation violation, Carlyle was also sentenced to a one year prison term to be served consecutive to these sentences.

DISCUSSION

¶5 We review Carlyle's convictions and sentences for fundamental error. *See State v. Gendron*, 168 Ariz. 153, 155, 812 P.2d 626, 628 (1991). Counsel for Carlyle has advised this Court that after a diligent search of the entire record, he has found no arguable question of law. We have read and considered counsel's brief and fully reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find

