DIVISION ONE
FILED: 08/02/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	)	No. 1 CA-CR 10-0831
	)	DEPARTMENT D
v.	)	**MEMORANDUM DECISION**
JULIE KERLEY, Appellant.	)	(Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Mohave County

Cause No. CR 2009-00709

The Honorable Rick A. Williams, Judge

AFFIRMED

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

Jill L. Evans, Mohave County Public Defender — Kingman
by Diane S. McCoy, Deputy Public Defender
Attorney for Appellant

H A L L, Judge

¶1 Julie Kerley (defendant) appeals from her convictions and sentences for one count of transportation of dangerous drugs for sale, a class two felony, and one count of possession of

drug paraphernalia, a class six felony. Her counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating that she searched the record and found no arguable issue of law, and asking this court to examine the record for reversible error. *Smith v. Robbins*, 528 U.S. 259 (2000). Defendant was afforded the opportunity to file a brief in propria persona and presented the following issues: (1) ineffective assistance of counsel; (2) the right to face her accuser; (3) transcripts from investigator not provided to the trial court; (4) her son's drug use and imprisonment prejudiced her case; and (5) adoption of her grandchildren.

¶2 We review for fundamental error, which is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quotation omitted). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Alvarado*, 219 Ariz. 540, 541, ¶ 2, 200 P.3d 1037, 1038 (App. 2008). Finding no reversible error, we affirm.

¶3 Defendant was indicted for one count of transportation of drugs for sale, a class two felony, in violation of Arizona

Revised Statutes (A.R.S.) section 13-3407 (2010), and possession of drug paraphernalia, a class six felony, in violation of A.R.S. § 13-3415 (2010).

¶4 The following evidence was presented at trial. Kingman Detective Eric Urquijo, Sr. testified that he was on duty on June 27, 2009, when he noticed defendant driving a Toyota Tundra truck with a "cracked" rear brake light. While defendant was stopped at a red light, Detective Urquijo exited his unmarked vehicle, "rapped on [defendant's] window," and asked her to pull over. Defendant drove into a parking lot, immediately exited the vehicle, and started smoking a cigarette. Detective Urquijo described defendant's demeanor as "very nervous." Defendant permitted Detective Urquijo to search her vehicle. Prior to searching her vehicle, Detective Urquijo conducted a general pat-down around defendant's waistline as well as a visual search and notified defendant that a female officer was going to conduct a more thorough pat-down. At that point, defendant told Detective Urquijo that "[t]here's something I gotta tell you" and revealed that it involved "an illegal matter." Detective Urquijo advised defendant of her *Miranda*[1] rights, and defendant pulled her pants "away from her waistline and reached inside . . . [and] pull[ed] out [a hot dog

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

bun sized] bundle . . . of white crystals."[2] Immediately thereafter, she pulled out a second bundle of white crystals the size of a golf ball. Detective Urquijo testified that defendant explained she had been contacted by an acquaintance, "Trini," who was having car problems, and he asked defendant to translate for him to a mechanic because he was not fluent in English. Manny Montierro and a mechanic arrived to assist Trini with his vehicle and when the vehicle "was up and runnin', [defendant] was provided both . . . of the packages of white crystals to take to Manny Montierro's residence." Detective Urquijo stated that defendant told him she did not know what the substance was, but "believed it was something illegal, so that's why she had it stuffed in" her pants.

¶5 Jennifer Shirley, Arizona Department of Public Safety Western Regional Crime Lab employee, analyzed the two packages of methamphetamines. One package weighed 13.9 grams and the other weighed 199.1 grams. Detective Urquijo testified that this quantity of methamphetamines was worth approximately $21,000.00. He also testified that a typical user would only have between .2 grams and one gram of methamphetamines on their person.

[2] Arizona Department of Public Safety Western Regional Crime Lab subsequently determined that the substance was methamphetamines.

¶6 Defendant testified that her friend, Ryan Kelly, had left a rag in her vehicle between the console and the driver's seat and when Detective Urquijo indicated he was pulling defendant over, she "pulled the rag, and there was a bag. And it scared [her] half to death, because [she had] never seen that." She thought it looked like "sea salt" rocks. Because defendant became "scared" when Detective Urquijo "banged on [her] window," she put the packages under her clothes. She later gave Detective Urquijo the packages and explained that they were not hers and they had been left in her truck.

¶7 Detective Urquijo stated that defendant never mentioned the name Ryan Kelly to him and that he did not find a rag in defendant's vehicle or on her person.

¶8 The jury found defendant guilty of one count of transportation of dangerous drugs for sale, a class two felony, and one count of possession of drug paraphernalia, a class six felony. The court sentenced her to a mitigated prison term of six years for the first count and a mitigated term of six months for the second term, both counts to be served concurrently and with fifty-seven days of pre-incarceration credit.

¶9 First, defendant argues ineffective assistance of counsel. This court will not consider claims of ineffective assistance of counsel on direct appeal regardless of merit. *See State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9, 39 P.3d 525, 527 (2002).

We therefore decline to address this argument. If defendant wishes to pursue a claim for ineffective assistance of counsel, she should file a claim for post-conviction relief pursuant to an Arizona Rule of Criminal Procedure 32.

¶10 Defendant next argues that she has a "right to face [her] accuser," Ryan Kelly. She contends that she "know[s] [she] was set up by Ryan A. Kelley[] [t]o keep himself out of prison." There is nothing in the record to support these allegations and defendant fails to provide any legal support that she has a post-conviction right to confront an alleged "accuser." Thus, there is no merit to this argument and no reversible error.

¶11 Third, defendant maintains that "[t]ranscripts from [her] investigator of two witness[es] that were to testify on [her] behalf [were] never given to the" trial court. Our review of the record failed to find the existence of transcripts from an investigator or any request to provide the court with such transcripts. Defendant does not explain who the witnesses or investigator are, what information the transcripts contained, or how the failure to submit these transcripts prejudiced her. We therefore discern no error, much less fundamental error.

¶12 Fourth, defendant contends that the court was prejudiced in sentencing defendant because it was aware of her son's drug use and imprisonment. There is nothing in the record

to support this contention. The trial court did not comment on defendant's son's drug use or his prison term during sentencing and there is no reason for this court to believe that the trial court considered the information upon sentencing defendant. Further, the court sentenced defendant to a mitigated prison term, which does not lend support to defendant's argument. The court did not commit reversible error.

¶13 Last, defendant argues that she would not have been able to adopt her grandchildren if she had committed the two felonies. We disagree. This reasoning is flawed because she committed the crimes after she adopted her grandchildren and, therefore, the court could not have considered commission of the felonies when it permitted defendant to adopt her grandchildren.

¶14 We have searched the entire record for reversible error. *See Leon,* 104 Ariz. at 299, 451 P.2d at 880. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within statutory limits.

¶15 After the filing of this decision, counsel's obligations pertaining to defendant's representation in this appeal have ended. Counsel need do no more than inform defendant of the status of the appeal and her future options, unless counsel's review reveals 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). Defendant has thirty days from the date of this decision to proceed, if she desires, with a pro per motion for reconsideration or petition for review. Accordingly, defendant's convictions and sentences are affirmed.

/s/
PHILIP HALL, Judge

CONCURRING:

/s/
PATRICK IRVINE, Presiding Judge

/s/
JOHN C. GEMMILL, Judge