IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

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FILED: 06/30/2011
RUTH A. WILLINGHAM, CLERK
BY: DLL

STATE OF ARIZONA, Appellee,	)	1 CA-CR 10-0889
	)	DEPARTMENT E
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
CHRISTOPHER HARRIS MCCONNELL, Appellant.	)	Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-106002-001 DT

The Honorable Sherry K. Stephens, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender — Phoenix
By Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

W I N T H R O P, Judge

¶1 Christopher Harris McConnell ("Appellant") appeals his conviction and sentence for theft of means of transportation. Appellant's counsel has filed a brief in accordance with *Smith*

v. Robbins, 528 U.S. 259 (2000); *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 on appeal and found no arguable question of law that is not frivolous. Appellant's counsel therefore requests that we review the record for fundamental error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (stating that this court reviews the entire record for reversible error). Although this court granted Appellant the opportunity to file a supplemental brief *in propria persona*, he has not done so.

¶2 We have appellate jurisdiction pursuant to the Arizona Constitution, Article 6, Section 9, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2003), 13-4031 (2010), and 13-4033(A) (2010). Finding no error warranting reversal of Appellant's conviction and sentence, we affirm.

I. FACTS AND PROCEDURAL HISTORY[1]

¶3 On February 9, 2010, a grand jury issued an indictment, charging Appellant with one count of theft of means of transportation, a class three felony, based on his alleged knowing control of a stolen vehicle on December 20, 2009. *See*

[1] We review the facts in the light most favorable to sustaining the verdict and resolve all reasonable inferences against Appellant. *See State v. Kiper*, 181 Ariz. 62, 64, 887 P.2d 592, 594 (App. 1994).

A.R.S. § 13-1814(A)(5) (2010).[2] The State later alleged that Appellant had one historical prior felony conviction and that the offense was committed while he was released from confinement pursuant to A.R.S. § 13-708(C) (2010).

¶4 Before trial, Appellant moved to suppress statements that he made after his arrest, and he requested a voluntariness hearing. The court held an evidentiary hearing on Appellant's motions, and at the outset of the hearing, the State conceded that a Fourth Amendment[3] violation had occurred during Appellant's arrest. During the hearing, evidence was presented that, on February 1, 2010, Phoenix police officers conducted a warrantless arrest of Appellant at his home. After being arrested, Appellant was transported to a police station, where he was advised of his rights pursuant to *Miranda*.[4] Appellant spoke briefly with the interviewing detective and admitted he had "an inkling" the Toyota van he had been driving the previous December 20 was stolen. Shortly thereafter, Appellant invoked his right to counsel, and questioning ceased. After finding that Appellant's arrest was based on probable cause, Appellant had been advised of his rights pursuant to *Miranda*, and his

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[2] We cite the current version of the applicable statute because no revisions material to our decision have since occurred.

[3] *See* U.S. Const. amend. IV.

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

statements were made voluntarily, the court denied Appellant's motion to suppress and ruled that his statements to the interviewing detective were admissible during the State's case-in-chief.[5]

¶5 At trial, the State presented the following evidence: At approximately 4:20 a.m. on December 20, 2009, a sergeant with the City of Phoenix Police Department observed a 1993 Toyota Previa van stopped on North Tatum Boulevard. Appellant was the driver of the van. Using his patrol computer, the sergeant ran the van's license plate and learned that the registration was expired. Both the VIN and the license plate of the van came back from the computer information as being from an Oregon address. The sergeant stopped, approached the van, and asked Appellant for his driver's license and insurance information.

¶6 When questioned about who owned the van, Appellant stated that it belonged to some friends of his parents and that he did not know how to reach them. Appellant could provide no further information about the van, and because Appellant was driving on a suspended license, the van was towed and impounded.

¶7 An impound notice was sent to the owner of the van, J.M. J.M.'s primary residence was in Oregon, although he lived part of the year in Cave Creek, Arizona. J.M. had left Arizona

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[5] *See State v. Canez*, 202 Ariz. 133, 152, ¶ 57, 42 P.3d 564, 583 (2002) (citing *New York v. Harris*, 495 U.S. 14, 20 (1990)).

for Oregon sometime around Thanksgiving, and he received the impound notice the last week of December. J.M. contacted a neighbor in Arizona, who discovered that J.M.'s Cave Creek home had been burglarized and confirmed the van was missing. J.M. reported the van stolen, and he flew back to Arizona, where he was able to retrieve the van from storage. The police sergeant who had encountered Appellant on December 20, 2009, supplemented his original departmental report to reflect the new information he learned about the reported theft of the van and, as previously noted, Appellant was arrested on February 1, 2010. J.M. testified at trial that he did not know Appellant and had not given him permission to drive the van.

¶8 The jury convicted Appellant as charged. After finding that Appellant had one prior felony conviction, the trial court sentenced Appellant to a minimum term of 4.5 years' incarceration in the Arizona Department of Corrections and credited him for 135 days of presentence incarceration.[6] Appellant filed a timely notice of appeal.

II. ANALYSIS

¶9 We have reviewed the entire record for reversible error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. The evidence

[6] The court also reinstated Appellant on supervised probation in two other matters after his release in this matter.

presented at trial was substantial and supports the verdict, and the sentence was within the statutory limits. Appellant was represented by counsel at all stages of the proceedings and was given the opportunity to speak at sentencing. The proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶10 After filing of this decision, defense counsel's obligations pertaining to Appellant's representation in this appeal have ended. Counsel need do no more than inform Appellant of the status of the appeal and of his future options, unless counsel's review reveals an issue appropriate for petition for review to the Arizona Supreme Court. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Appellant has thirty days from the date of this decision to proceed, if he desires, with a *pro per* motion for reconsideration or petition for review.

III. CONCLUSION

¶11 Appellant's conviction and sentence are affirmed.

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LAWRENCE F. WINTHROP, Judge

CONCURRING:

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MAURICE PORTLEY, Presiding Judge SHELDON H. WEISBERG, Judge