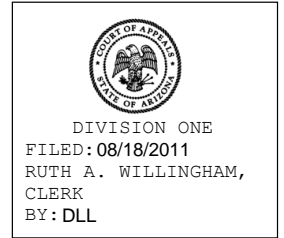


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



STATE OF ARIZONA,) No. 1 CA-CR 10-0918
)
Appellee,) DEPARTMENT A
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
ANDRES RODRIGUEZ MARTINEZ,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. No. CR 2010-111132-002 DT

The Honorable Maria del Mar Verdìn, Judge

AFFIRMED

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

Bruce Peterson, Maricopa County Legal Advocate Phoenix
By Kerri L. Chamberlin, Deputy Legal Advocate
Attorney for Appellant

D O W N I E, Judge

¶1 Andres Rodriguez Martinez ("defendant") appeals his convictions and sentences for theft by extortion, smuggling, and misconduct involving weapons. Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and requested that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Defendant was given the opportunity to file a supplemental brief *in propria persona*, but he has not done so. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981).

FACTS AND PROCEDURAL HISTORY

¶2 In February 2010, J.G. arranged to be smuggled into the United States from Mexico in exchange for \$1500. After arriving in Phoenix, J.G. was taken and held against his will at a "drop house," where his shoes, wallet, money, and other personal items were taken from him. Defendant was an armed guard at the house and collected phone numbers from those being held captive. He called J.G.'s brother-in-law, A.R., and demanded \$3000, threatening to kill J.G. if the money was not delivered. After several days of similar phone calls, A.R. contacted the police, who helped arrange an exchange. Defendant and his girlfriend, Joanna Martinez, transported J.G. to the

exchange point while defendant maintained phone contact with A.R. After confirming J.G. was in the car, officers apprehended defendant and Joanna. They found a loaded handgun in the car and three cell phones.¹ Surveillance officers immediately went to the registered address for the vehicle and found numerous people attempting to flee the residence. Officers ascertained that Joanna's parents owned the home, which was being used as a drop house. Inside the house, they found firearms and multiple boxes containing wallets and personal documents.

¶13 Defendant was indicted for kidnapping, a class 2 dangerous felony, theft by extortion, a class 2 dangerous felony, smuggling, a class 4 felony, and misconduct involving weapons, a class 4 felony. A jury trial ensued. The jury acquitted defendant of kidnapping, but found him guilty of theft by extortion, smuggling, and misconduct involving weapons. As to the theft by extortion offense, the jury found several aggravating circumstances: use of a deadly weapon, the presence of an accomplice, and commission of the offense for pecuniary gain. The court sentenced defendant to an aggravated sentence of 15 years on count 2, and presumptive terms of 2.5 years each

¹ A police officer testified that the phone log from one cell phone displayed common characteristics of a phone used for extortion.

on counts 3 and 4, all to run concurrently, with 236 days of presentence incarceration credit. This timely appeal followed.

DISCUSSION

¶4 We have read and considered the brief submitted by defense counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within the statutory ranges. Defendant was represented by counsel at all critical phases of the proceedings. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

¶5 The State presented substantial evidence of guilt, including testimony from J.G. and A.R., as well as police officers who were present at the exchange and who investigated the drop house. The parties stipulated that defendant was illegally in the United States, making him a prohibited possessor under A.R.S. § 13-3101(A)(7)(e). Based on the evidence presented, a reasonable jury could have found defendant guilty of the offenses for which he was convicted.

CONCLUSION

¶6 We affirm defendant's convictions and sentences. Counsel's obligations pertaining to defendant's representation

in this appeal have ended. Counsel need do nothing more than inform defendant of the status 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, defendant shall have thirty days from the date of this decision to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

JON W. THOMPSON, Judge