

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: 10/18/2011  
RUTH A. WILLINGHAM,  
CLERK  
BY: DLL

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-1007  
 )  
 Appellee, ) DEPARTMENT A  
 )  
 v. ) MEMORANDUM DECISION  
 )  
 TINA MARIE SMITH, ) (Not for Publication -  
 ) Rule 111, Rules of the  
 Appellant. ) Arizona Supreme Court)  
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Appeal from the Superior Court in Maricopa County

Cause No. CR2009-048845-001 SE

The Honorable Susanna C. Pineda, Judge

**AFFIRMED**

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Thomas C. Horne, 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 Cory Engle, Deputy Public Defender  
Attorneys for Appellant

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**J O H N S E N**, Judge

¶1 This appeal was timely filed in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz.

297, 451 P.2d 878 (1969), following Tina Marie Smith's conviction of one count of aggravated taking the identity of another, a Class 3 felony. Smith's counsel has searched the record on appeal and found no arguable question of law that is not frivolous. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Smith was given the opportunity to file a supplemental brief, but did not do so. Counsel now asks this court to search the record for fundamental error. After reviewing the entire record, we affirm Smith's conviction and sentence.

#### FACTS AND PROCEDURAL HISTORY

¶2 Police executed a search warrant in an apartment where Smith was staying.<sup>1</sup> In the apartment, officers found rental applications and other similar documents containing personal identifying information of more than 40 individuals. Officers recovered notebooks containing credit card numbers and other personal identifying information. They also recovered Smith's backpack, which contained identification cards and credit cards belonging to others. The apartment also contained three computers, one of which was running a check-making program, as

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<sup>1</sup> Upon review, we view the facts in the light most favorable to sustaining the jury's verdict and resolve all inferences against Smith. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

well as check stock and a printed check. Additionally, officers found multiple cassette tapes, five of which were admitted as evidence at trial, that contained recorded "quality control" conversations in which individuals gave their credit card numbers and other identifying information while making purchases over the phone. Smith told officers that someone had given her the credit cards found in her wallet and that she was holding the cassette tapes for a friend. Smith admitted she listened to some of the cassette tapes and wrote down in the notebooks information she heard on the tapes.

¶13 Smith was charged with aggravated taking the identity of another. At trial, the jury found Smith guilty. The court found Smith had four historical prior felony convictions and imposed the presumptive sentence of 11.25 years in prison.

¶14 Smith timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1) (2011), 13-4031 (2011) and -4033(A)(1) (2011).<sup>2</sup>

#### **DISCUSSION**

¶15 The record reflects Smith received a fair trial. She was represented by counsel at all hearings prior to trial and at all times during the trial. Smith's counsel waived Smith's

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<sup>2</sup> Absent material revisions after the date of an alleged offense, we cite a statute's current version.

presence for the Comprehensive Pretrial Conference and the Trial Setting Hearing. Otherwise, Smith was present at all critical pretrial stages and was present for the entire trial, including the verdict.

¶16 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly comprised of eight members with two alternates. The court properly instructed the jury on the elements of the charges, the State's burden of proof and the necessity of a unanimous verdict. The jury returned a unanimous verdict, which was confirmed by juror polling. The court received and considered a presentence report and addressed its contents during the sentencing hearing.

¶17 When the court made its oral pronouncement at sentencing, it stated Smith had been found guilty of "taking the identity of another." The minute entry, however, reflects the correct charge on which Smith was indicted and found guilty, "aggravated taking the identity of another." "Upon finding a discrepancy between the oral pronouncement of sentence and a minute entry, a reviewing court must try to ascertain the trial court's intent by reference to the record." *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992). There is ample evidence in the record that the crime of which Smith was convicted was aggravated taking the identity of another. The

court imposed a legal sentence for the crime of which Smith was convicted.

#### CONCLUSION

¶8 We have reviewed the entire record for reversible error and find none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881.

¶9 After the filing of this decision, defense counsel's obligations in this appeal have ended. Defense counsel need do no more than inform Smith of the outcome of this appeal and her future options, unless, upon review, counsel finds "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). On the court's own motion, Smith has 30 days from the date of this decision to proceed, if she wishes, with a *pro per* motion for reconsideration. Smith has 30 days from the date of this decision to proceed, if she wishes, with a *pro per* petition for review.

/s/  
DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/  
MARGARET H. DOWNIE, Judge

/s/  
JON W. THOMPSON, Judge