

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



DIVISION ONE
FILED: 12/06/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

STATE OF ARIZONA,)
) No. 1 CA-CR 10-0598
)
 Appellee,) DEPARTMENT C
)
 v.) **MEMORANDUM DECISION**
)
 DANIEL ROBERT GONZALES,) (Not for Publication -
) Rule 111, Rules of the
 Appellant.) Arizona Supreme Court)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-173935-001 DT

The Honorable Barbara L. Spencer, Judge

AFFIRMED

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

Thomas Gorman Sedona
Attorneys for Appellant

H A L L, Judge

¶1 Daniel Robert Gonzales (defendant) appeals from his convictions and the sentences imposed. For the reasons set forth below, we affirm.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, he was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). In his October 25, 2011 motion, defendant raises two issue regarding the effectiveness of his representation and the sufficiency of the evidence.

¶3 We review for fundamental error, error that goes to the foundation of a case or takes from the defendant a right essential to his defense. See *State v. King*, 158 Ariz. 419, 424, 763 P.2d 239, 244 (1988). We view the evidence presented at trial in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003).

¶4 Defendant was charged by indictment with two counts of armed robbery, class two dangerous felonies, in violation of Arizona Revised Statutes (A.R.S.) section 13-1904(A)(1) (2010).

¶15 The following evidence was presented at trial. At approximately 3:00 a.m. on November 25, 2009, O.Q. and A.V. were working at a Chevron station. O.Q. was stocking ice when he heard A.V. scream his name. Immediately, O.Q. went to the front of the store and saw A.V. struggling with a man in an attempt to prevent the man from taking a case of beer. O.Q. ordered the man to leave the store and the man then pulled a knife from his pocket and challenged O.Q. to a fight. At that point, another man with tattoos on his chest entered the store, grabbed a thirty-pack of beer, and exited the store. The man with the knife then exited the store. Moments later, however, both men reentered the store, with the one man still wielding a knife, and the other man grabbed more beer, and they again left.

¶16 As soon as the men left, A.V. called the police and gave a description of the vehicle the men left in and the direction it was headed. Shortly thereafter, Officer Christopher Gallegos of the Phoenix Police Department received a call from dispatch providing a description of the vehicle and the occupants. Officer Gallegos observed a silver four-door Chevy Impala that matched the description of the vehicle and began following it. Because it was considered a "high risk" vehicle stop, Officer Gallegos waited for other officers before he conducted the stop.

¶17 After ordering the occupants out of the vehicle, Officer Gallegos conducted a search of the car and found the two cases of beer behind a speaker box in the trunk. He also found a knife matching A.V.'s description in the passenger side visor.

¶18 At trial, O.Q. testified that Officer Gallegos asked him to view the occupants of the Chevy Impala and he identified defendant as the man who took the cases of beer. He further testified, however, that defendant looked "very different" at trial than the man he observed that evening. When defendant was asked to show O.Q. and the jury his chest, O.Q. testified that defendant's tattoos were generally how he remembered them, but noted that he was primarily focusing on the knife and not defendant's appearance at the time of the incident.

¶19 After a six-day trial, the jury found defendant guilty as charged. The trial court found that the aggravating and mitigating factors weighed evenly and sentenced defendant to presumptive concurrent terms of 10.5 years in prison on each count with 165 days of presentence incarceration credit.

¶10 Defendant first argues ineffective assistance of counsel. We 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, he may

file a claim for post-conviction relief pursuant to Arizona Rule of Criminal Procedure 32.

¶11 Defendant next contends that insufficient evidence was presented at trial to support his convictions. "We review the sufficiency of the evidence by determining whether substantial evidence supports the jury's finding, viewing the facts in the light most favorable to sustaining the jury verdict." *State v. Kuhs*, 223 Ariz. 376, 382, ¶ 24, 224 P.3d 192, 198 (2010) (internal quotation omitted). "Substantial evidence is proof that reasonable persons could accept as adequate . . . to support a conclusion of defendant's guilty beyond a reasonable doubt. *Id.* (internal quotation omitted). We set aside a jury verdict for insufficiency of the evidence only when it is clear "that upon no hypothesis whatever is there sufficient evidence to support the conclusion reached by the jury." *State v. Arredondo*, 155 Ariz. 314, 316, 746 P.2d 484, 486 (1987). To obtain a conviction in this case, the State was required to prove that defendant, or his accomplice, was armed with a deadly weapon or a simulated deadly weapon when they took property from another person against his will. A.R.S. §§ 13-1902, -1904(A)(1) (2010).

¶12 Based on our review of the record, there was substantial evidence supporting defendant's convictions. O.Q. testified that he heard his coworker screaming for help and then

observed A.V. fighting with a man who was attempting to take beer. The man pulled out a knife and challenged O.Q. to a fight. Defendant then entered the store, grabbed the beer, and the men left. Moments later, the two men reentered the store and defendant took more beer while the other man continued to wave the knife in a threatening manner. Although O.Q. testified that defendant "looked different" at trial, O.Q. positively identified defendant as one of the perpetrators the night of the robbery and he further testified that defendant's tattoos were consistent with his recollection of the tattoos on the man who took the beer. Therefore, we conclude that the State, through O.Q.'s testimony, presented sufficient evidence from which the jury could reasonably conclude that defendant committed the crimes charged.

¶13 We have read and considered counsel's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. 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 sentences imposed were within statutory limits.

¶14 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 his 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 he 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/ MICHAEL J. BROWN, Presiding Judge

_/s/ PATRICIA K. NORRIS, Judge