

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: 12/13/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0798
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
JUAN ABUNDEZ LEYVA,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR 2009-007446-003 DT

The Honorable Michael W. Kemp, Judge

AFFIRMED

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

Tyrone Mitchell, P.C. Phoenix
By Tyrone Mitchell
Attorney for Appellant

B R O W N, Judge

¶1 Juan Abundez Leyva appeals his convictions and sentences for one count of conspiracy to commit possession of marijuana for sale and one count of possession of marijuana for

sale. Counsel for Leyva 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 searching the record on appeal, he was unable to find any arguable grounds for reversal. Leyva was granted the opportunity to file a supplemental brief *in propria persona*, but he has not done so.

¶12 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Leyva. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶13 Leyva was indicted on Count 1, conspiracy to commit possession of marijuana for sale, a class 2 felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-1003 (2010)¹ and Count 2, possession of marijuana for sale, a class 2 felony, in violation of A.R.S. § 13-3405 (Supp. 2011). The following evidence was presented at trial.

¶14 In June 2009, members of the Glendale Police Department were conducting surveillance of a house for suspected drug activity. Leyva was seen arriving at the house as a

¹ Absent material revision after the date of the alleged offense, we cite the statute's current version.

passenger in a Ford truck, which his accomplice was driving. After being inside the house for approximately fifteen minutes, the two men left. The accomplice was carrying a large plastic garbage bag, which he placed in the cab of the truck. A mobile surveillance team followed the truck and initiated a traffic stop. Leyva immediately ran from the truck, but was apprehended a short distance away and arrested.

¶15 At the police station, Leyva was read his *Miranda* rights and agreed to speak to an officer.² The officer testified that Leyva told him he and the accomplice worked together in the construction industry. The accomplice asked Leyva if he knew where he could buy "about five to seven pounds" of marijuana, and Leyva contacted someone he knew that was able to sell that quantity of marijuana. Leyva also indicated that he was supposed to receive a portion of the profits from the transaction.

¶16 The jury found Leyva guilty on both counts and that the State had proven beyond a reasonable doubt that the marijuana weighed more than four pounds. Leyva was sentenced to concurrent terms of nine and one-quarter year's imprisonment for each count, to run concurrently, and credited with 310 days of presentence incarceration credit. This timely appeal followed.

² See *Miranda v. Arizona*, 384 U.S. 436 (1966). The interview was conducted primarily in Spanish.

¶17 We have searched the entire record for fundamental error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Leyva was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Accordingly, we affirm Leyva's convictions and sentences.

¶18 Upon the filing of this decision, counsel shall inform Leyva of the status of the appeal and his options. Defense counsel has no further obligations 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). Leyva shall have thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

/s/

MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

PATRICIA K. NORRIS, Judge

/s/

PHILIP HALL, Judge