

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: 11/22/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 10-0905
)
Appellee,) DEPARTMENT E
)
v.) **MEMORANDUM DECISION**
)
GILBERT LOUIS AYALA, III,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-110993-001

The Honorable Samuel A. Thumma, Judge

CONVICTION AND SENTENCE AFFIRMED

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 Christopher V. Johns, Deputy Public Defender
Attorneys for Appellant

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 Gilbert Louis Ayala, III's conviction of burglary in the second degree, a Class 3 felony. Ayala'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). Ayala 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 Ayala's conviction and sentence.

FACTS AND PROCEDURAL HISTORY

¶2 Driving separate vehicles, the victim and his son returned to the victim's house one day.¹ The victim saw an unknown car parked in the driveway. He noticed the front door to his house was open, and he saw an individual coming out of the area of the front door. After the victim and his son pulled into the driveway, they saw Ayala walk down the driveway from the house to the car, get into the car and drive away. The victim noted the car's license plate.

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

¶13 Upon entering the house, the victim saw that the front door frame was smashed, his TV set was gone and other items were scattered across the floor. He also noted that some items had been gathered and placed in a tub near the front door. The victim phoned the police and gave them the license plate number of the car, which was registered to Gilbert Louis Ayala. Police found Ayala at his residence and took him into custody. Though Ayala denied being near the victim's house that day, both the victim and his son identified Ayala in a photographic lineup as the man they saw drive away from the house.

¶14 Ayala was charged with second-degree burglary. At trial, the jury found him guilty. At sentencing, Ayala addressed the court and testified he had pulled into the victim's driveway because he was experiencing car trouble. The court found Ayala had at least two historical prior felony convictions and imposed a presumptive sentence of 11.25 years in prison.

¶15 Ayala timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031 and -4033 (2011).

DISCUSSION

¶16 The record reflects Ayala received a fair trial. He was represented by counsel at all stages of the proceedings

against him and was present at all critical stages. The court held appropriate pretrial hearings. Pursuant to Arizona Rule of Evidence 609, the court held a hearing on Ayala's prior convictions; it determined that his conviction of promoting prison contraband would be unduly prejudicial and could not be used by the State for impeachment purposes, and it sanitized two other prior felony convictions. The court did not conduct a voluntariness hearing; however, the record did not suggest a question about the voluntariness of Ayala's statements to police. See *State v. Smith*, 114 Ariz. 415, 419, 561 P.2d 739, 743 (1977); *State v. Finn*, 111 Ariz. 271, 275, 528 P.2d 615, 619 (1974).

¶17 The State presented both direct and circumstantial evidence sufficient to allow the jury to convict. The jury was properly composed 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, addressed its contents during the sentencing hearing and imposed a legal sentence for the crime of which Ayala was convicted.

CONCLUSION

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

¶19 After the filing of this decision, defense counsel's obligations pertaining to his representation of Ayala in this appeal have ended. Defense counsel need do no more than inform Ayala of the outcome of this appeal and his 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, Ayala has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* motion for reconsideration. Ayala has 30 days from the date of this decision to proceed, if he wishes, with a *pro per* petition for review.

/s/

DIANE M. JOHNSEN, Presiding Judge

CONCURRING:

/s/

PATRICIA A. OROZCO, Judge

/s/

LAWRENCE F. WINTHROP, Judge