

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: 11/01/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0189
)
Appellee,) DEPARTMENT D
)
v.) **MEMORANDUM DECISION**
)
RICHARD LEROY OMEY,) (Not for Publication -
) Rule 111, Rules of the
Appellant.) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-130905-002DT

The Honorable Kristin C. Hoffman, Judge

AFFIRMED

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

Bruce F. Peterson, Legal Advocate Phoenix
By Consuelo M. Ohanesian, Deputy Legal Advocate
Attorneys for Appellant

G E M M I L L, Judge

¶1 Richard Leroy OmeY appeals from his conviction of attempted theft of means of transportation, a class four felony, in violation of Arizona Revised Statutes ("A.R.S.") sections 13-

1001 (2010) and 13-1814 (2010).¹ Omey's counsel filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), stating that he has searched the record and found no arguable question of law and requesting that this court examine the record for reversible error. Omey was afforded the opportunity to file a supplemental brief *in propria persona* but did not do so. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 "We view the facts and all reasonable inferences therefrom in the light most favorable to sustaining the convictions." *State v. Powers*, 200 Ariz. 123, 124, ¶ 2, 23 P.3d 668, 669 (App. 2001). The following facts were revealed at trial.

¶3 On June 12, 2010, co-defendant Christopher Brooks, asked Omey to help him get a car running that Brooks had just purchased. Omey agreed, and they both went to a trailer park to pick up a 2001 Chevy Malibu ("Malibu") at approximately 11:00 a.m. on June 13, 2010. About that same time, trailer park resident, Rita W., was taking her trash out when she saw three people milling about or working on the Malibu. Rita found it

¹ We cite to the current version of the applicable statute because no revisions material to this decision have since occurred.

"odd" that these people were working on her neighbor Jason H's car. Rita moved closer for further inspection and saw that the Malibu's hood was up with Brooks under the hood, the dash was being torn up by Omey with a screwdriver like object, and the ignition switch was out with Omey trying to start the Malibu with the wires. After addressing both defendants, Rita called the trailer park manager, Marsha H. Marsha also looked into the Malibu and saw the dash torn out, the radio missing, and Omey trying to "hotwire" the car.

¶14 Next, Marsha went to Jason's trailer to notify him what was going on with the Malibu and told the defendants that she was going to call the police. When Marsha, Jason, and Rita came out to address the defendants, they packed up and hurriedly left the scene at a high rate of speed. Marsha saw the rear plate number of defendants' fleeing vehicle and reported it to police when they arrived.

¶15 Officer V. responded to the call and interviewed Rita, Marsha, and Jason. Officer V. also inspected the Malibu. He saw that pieces of the ignition switch were on the floor of the car, a hole in the dash where the stereo used to be, and that the "ignition had been punched out."

¶16 Later that same day, at approximately 3:00 to 4:00 p.m., Brooks and Omey returned to the trailer park. Marsha was again alerted to their presence and called the police a second

time. This time Officer E. took the call and arrived at the scene. Rita, Marsha, and Jason all spoke with Officer E. and re-identified Brooks and Omev as the ones trying to steal the Malibu earlier in the day. Officer E. also checked the Malibu and discerned that the stereo was missing, the dash was missing, and the ignition had been punched. Brooks was unable to produce a key or title to the Malibu upon Officer E.'s request. However, Brooks did show Officer E. a bill of sale from a Brian H.

¶17 At trial, Steve C. testified that he owned the Malibu and was living with his brother Jason in the trailer park. Steve also testified that there had been no prior damage to the interior of the Malibu until the incident on June 13, 2010. Moreover, he testified that the Malibu was not for sale. Jason H. also testified that the Malibu was undamaged prior to the same incident.

¶18 Omev did not testify at trial. A jury found Omev guilty of attempt to commit theft of means of transportation. The State alleged that Omev had historical prior convictions. The trial court held a trial on priors and Omev was out of custody and not present. The trial judge found that the State proved that Omev had four prior felony convictions. Omev surrendered himself and appeared for sentencing on March 16, 2011. Omev was sentenced to the presumptive term of ten years

and was given thirteen days of presentence incarceration credit.

¶9 Omey timely appealed, and we have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution, and A.R.S. §§ 12-120.21 (2003), 13-4031 (2010), and 13-4033 (2010).

DISCUSSION

¶10 Having considered defense counsel's brief and examined the record for reversible error, see *Leon*, 104 Ariz. at 300, 451 P.2d at 881, we find none. The sentence imposed falls within the range permitted by law, and the evidence presented supports the conviction. As far as the record reveals, Omey was represented by counsel at all stages of the proceedings, and these proceedings were conducted in compliance with his constitutional and statutory rights and the Arizona Rules of Criminal Procedure.

¶11 Pursuant to *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984), counsel's obligations in this appeal have ended. Counsel need do no more than inform Omey of the disposition 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. Omey has thirty days from the date of this decision in which to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.

CONCLUSION

¶12 The conviction and sentence are affirmed.

_____/s/_____
JOHN C. GEMMILL, Judge

CONCURRING:

_____/s/_____
PATRICK IRVINE, Presiding Judge

_____/s/_____
PHILIP HALL, Judge