

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: 11/08/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0192
)
Appellee,) DEPARTMENT B
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
LOUIS MORENO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellant.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-142512-001 SE

The Honorable Susan M. Brnovich, Judge

AFFIRMED

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

Bruce F. Peterson, Maricopa County Legal Advocate Phoenix
By Consuelo M. Ohanesian, Deputy Legal Advocate
Attorney for Appellant

D O W N I E, Judge

¶1 Louis Moreno timely appeals his convictions for trafficking in stolen property and theft in violation of Arizona Revised Statutes ("A.R.S.") sections 13-2307(A) and -1802(A)(5). Pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), defense counsel has searched the record, found no arguable question of law, and asks that we review the record for fundamental error. See *State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Moreno did not file a supplemental brief *in propria persona*. On appeal, we view the evidence in the light most favorable to sustaining the conviction. *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981), *cert. denied*, 459 U.S. 882 (1982).

FACTS AND PROCEDURAL HISTORY

¶2 On April 28, 2010, G.V. went to the Desert Botanical Gardens around 6:00 p.m. to take pictures of the sunset. Before entering the park, he stored his extra photo equipment in a bag and placed it in the footwell on the passenger side of his vehicle. He returned about an hour later and saw that the front passenger window was broken and his bag was missing. He filed a police report with the description and serial numbers of the stolen items.

¶3 On May 21, 2010, officers learned that one of the stolen items had been sold to Mo Money Pawn Shop ("Mo Money") on April 28, 2010, at 8:17 p.m. Detective Marin showed a photo

lineup to a pawnshop employee, who identified Moreno as the person who sold the photo equipment for \$500.

¶14 Moreno was indicted on one count of trafficking in stolen property ("count 1") and one count of theft ("count 2"), both class 3 felonies. A four-day jury trial ensued. Several witnesses, including G.V. and Moreno, testified. At the conclusion of the State's case-in-chief, Moreno moved for a judgment of acquittal pursuant to Rule 20, Arizona Rules of Criminal Procedure ("Rule"). The motion was denied.

¶15 Moreno testified and admitted selling the photo equipment to Mo Money. He claimed that a "poor couple" asked him to sell something for them because they did not have proper ID to complete the transaction. Although he had never met the couple and did not know what they were selling, he agreed. He testified that his role in the sale was only to provide ID, sign the receipt, and give his fingerprint.

¶16 The jury found Moreno guilty as charged. The court sentenced him to two presumptive terms of 11.25 years' imprisonment, to run concurrently, with 177 days of pre-sentence incarceration credit.¹

¹ Moreno was arrested on September 22, 2010, and sentenced on March 17, 2011, a total of 176 days of incarceration. The court credited him with 177 days. Because the State has not appealed, we will not disturb the trial court's calculation. See *State v. Lee*, 160 Ariz. 323, 324, 772 P.2d 1176, 1177 (App.

DISCUSSION

¶7 We have read and considered the briefs submitted by Moreno's counsel and have reviewed the entire record. *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find no fundamental error. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure, and the sentence imposed was within the statutory range. Moreno was present at all critical phases of the proceedings and was represented by counsel. The jury was properly impaneled and instructed. The jury instructions were consistent with the offenses charged. The record reflects no irregularity in the deliberation process.

The trial court properly denied Moreno's Rule 20 motion. A judgment of acquittal is appropriate only when there is "no substantial evidence to warrant a conviction." Ariz. R. Crim. P. 20. Substantial evidence is such proof that "reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Mathers*, 165 Ariz. 64, 67, 796 P.2d 866, 869 (1990) (citation omitted). "Reversible error based on insufficiency of the evidence occurs only where there is a complete absence of probative facts to support the conviction." *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d 610, 624 (1996).

1989)(a failure on the part of the State to appeal an incorrect pre-sentence incarceration credit waives the error).

¶18 The State presented substantial evidence of guilt. "A person who recklessly traffics in the property of another that has been stolen is guilty of trafficking in stolen property in the second degree." A.R.S. § 13-2307(A). "A person commits theft if, without lawful authority, the person knowingly . . . [c]ontrols property of another knowing or having reason to know that the property was stolen" A.R.S. § 13-1802(A)(5).

¶19 The pawn shop receipt showed the photo equipment was sold approximately one hour after it was reported stolen, and it contained Moreno's signature and fingerprint. Moreno admitted selling the equipment and conceded the property was not his. G.V. testified the items recovered from the pawn shop matched those stolen from his vehicle. He also testified, and Moreno agreed, that the items were worth approximately \$25,000. There was sufficient evidence for a reasonable jury to convict Moreno on both charges.

CONCLUSION

¶10 We affirm Moreno's conviction and sentence. Counsel's obligations pertaining to Moreno's representation in this appeal have ended. Counsel need do nothing more than inform Moreno 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. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154,

156-57 (1984). On the court's own motion, Moreno shall have 30 days from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.

/s/

MARGARET H. DOWNIE,
Presiding Judge

CONCURRING:

/s/

PETER B. SWANN, Judge

/s/

DONN KESSLER, Judge