IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

ALBERTO G. MARRUFO,
Appellant.

No. 2 CA-CR 2014-0375
Filed July 29, 2015

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Crim. P. 31.24.

Appeal from the Superior Court in Pima County
No. CR20100484001
The Honorable Howard Fell, Judge Pro Tempore

AFFIRMED AS MODIFIED

COUNSEL

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Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Joseph L. Parkhurst, Assistant Attorney General, Tucson
Counsel for Appellee

Alberto G. Marrufo, Douglas
In Propria Persona

MEMORANDUM DECISION

Judge Howard authored the decision of the Court, in which Presiding Judge Vásquez and Judge Brammer[1] concurred.

H O W A R D, Judge:

¶1 Following a jury trial, appellant Alberto Marrufo was convicted of two counts of fraudulent schemes and artifices and one count of theft. On appeal, Marrufo argues the trial court did not have jurisdiction over his case, that he was denied compulsory arbitration, that his presentence incarceration credit was incorrect, and that various aspects of his sentence are illegal. Because his presentence incarceration credit was calculated incorrectly, we modify his sentence, but otherwise affirm his convictions and sentences.

Factual and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the jury's verdicts. *See State v. Haight–Gyuro,* 218 Ariz. 356, ¶ 2, 186 P.3d 33, 34 (App. 2008). In 2002, Marrufo obtained a loan from Bank of America for the purchase of a Honda Accord. After making payments on that loan for nearly five years, Marrufo sent a check to Bank of America for the remaining balance of $9,699.58. Bank of America released the lien and sent Marrufo the title to the Honda after processing the check. That check was later returned to Bank of America because the account and routing numbers belonged to the United States Treasury,[2] not Marrufo.

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[1]The Hon. J. William Brammer, Jr., a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and the supreme court.

[2]According to evidence submitted at trial, citizens are not allowed to use United States Treasury account or routing numbers, or open accounts with the United States Treasury.

When Bank of America contacted Marrufo to inform him the loan had been reinstated, he stated he did "not wish to contract" with the bank and did not send any further payments.

¶3 In 2007, Marrufo obtained financing from Huntington Bank to lease a Toyota Tundra. After making payments for nine months, Marrufo sent Huntington Bank a check for $45,181.98, representing the purchase price of the truck. Huntington Bank released the lien on the truck and refunded Marrufo for overpayment. After receiving the title, Marrufo sold the truck to a third-party for approximately $30,000. The check later was returned to Huntington Bank as invalid because the account and routing number belonged to the United States Treasury, not an account held by Marrufo. Huntington Bank wrote Marrufo in order to collect the debt, but Marrufo responded by stating he did "not accept th[e] offer . . . [or] consent to th[e] proceeding."

¶4 Marrufo was charged and convicted as noted above. The trial court sentenced him to concurrent presumptive and mitigated prison terms, the longest of which was five years, and ordered Marrufo to pay restitution to Bank of America and Huntington Bank. We have jurisdiction over Marrufo's appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 13-4033(A)(1).

Trial Court's Jurisdiction

¶5 Marrufo's brief does not comply in any meaningful way with Rule 31.13, Ariz. R. Crim. P., governing criminal appeals. Litigants proceeding pro se are held to the same standards as attorneys. *See State v. Cornell,* 179 Ariz. 314, 331, 878 P.2d 1352, 1369 (1994). He therefore has waived his arguments and we may affirm his convictions based on this failure alone. *See State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995) (defendant waives claims insufficiently argued).

¶6 Nevertheless, to the extent we understand his arguments, we will address them. Marrufo appears to argue the trial court lacked jurisdiction to hear the criminal case against him because Marrufo did not "consent[], agree[] or contract[] with [t]he Court . . . or [t]he State of Arizona." We review de novo whether a

court has exceeded its jurisdiction. *State v. Payne*, 223 Ariz. 555, ¶ 5, 225 P.3d 1131, 1135 (App. 2009).

¶7 "A court must have both subject matter and personal jurisdiction to render a valid criminal judgment and sentence." *State v. Marks*, 186 Ariz. 139, 141, 920 P.2d 19, 21 (App. 1996). Subject matter jurisdiction "refers to a court's statutory or constitutional power to hear and determine a particular type of case." *State v. Maldonado*, 223 Ariz. 309, ¶ 14, 223 P.3d 653, 655 (2010). The constitution grants superior courts subject matter jurisdiction over "[c]riminal cases amounting to felony." Ariz. Const. art. VI, § 14(4); *see also* A.R.S. § 12-123(A).

¶8 "Personal jurisdiction refers to a court's power to bring a person into its adjudicative process . . . [and] without [it], the court has no person to hold accountable . . . ." *State v. L'Abbe*, 324 P.3d 1016, 1020 (Idaho Ct. App. 2014). A superior court has personal jurisdiction over a defendant who has been served a summons, or arrested on a warrant, and subsequently appears in court. *See State ex rel. Baumert v. Mun. Ct. of City of Phx.*, 124 Ariz. 543, 545, 606 P.2d 33, 35 (App. 1979); *see also* Ariz. R. Crim. P. 3.1 (issuance of warrant or summons initiates criminal proceedings); *United States v. Lussier*, 929 F.2d 25, 27 (1st Cir. 1991) ("It is well settled that a district court has *personal* jurisdiction over any party who appears before it, regardless of how his appearance was obtained.").

¶9 Here, the state filed felony charges against Marrufo for fraudulent schemes and artifices, A.R.S. § 13-2310, and theft, A.R.S. § 13-1802(A)(1). The trial court thus clearly had subject matter jurisdiction in Marrufo's case. *See Payne*, 223 Ariz. 555, ¶ 7, 225 P.3d at 1135 ("Because the state filed and tried felony charges against [defendants], the superior court clearly had original jurisdiction in these cases."). Similarly, the court issued a summons for Marrufo on criminal felony charges and he subsequently appeared in court, thus providing the court with personal jurisdiction over him. Marrufo's "consent[]" was not required. *See Frisbie v. Collins*, 342 U.S. 519, 522 (1952) ("There is nothing in the Constitution that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will."). Consequently, the court had both subject matter and

personal jurisdiction over Marrufo and his case and his argument fails. *See Marks*, 186 Ariz. at 141, 920 P.2d at 21.

Compulsory Arbitration

¶10 Marrufo additionally appears to argue he was wrongfully deprived of the opportunity to participate in compulsory arbitration. In Pima County, compulsory arbitration is available in civil lawsuits where the amount in dispute is less than $50,000. Ariz. R. Civ. P. 72(b); Pima Cnty. Super. Ct. Loc. R. P. 4.2(a); *see also* A.R.S. § 12-133(A). Because this case is a criminal prosecution, and not a civil dispute, compulsory arbitration was not available to Marrufo.

Presentence Incarceration Credit

¶11 Marrufo next argues the trial court incorrectly calculated his presentence incarceration, which the state concedes. Defendants are entitled to credit for each day spent in incarceration before their sentence. A.R.S. § 13-712(B). This court may modify a trial court's sentence to reflect the correct amount of presentence incarceration credit. *State v. Carnegie*, 174 Ariz. 452, 455, 850 P.2d 690, 693 (App. 1993); *see also* A.R.S. § 13-4037.

¶12 The trial court credited Marrufo with thirty-three days of presentence incarceration.[3] However, he was taken into custody on August 20, 2014 and held in custody until sentencing on October 14, 2014. The state concedes Marrufo is entitled to fifty-four days of presentence incarceration credit, which Marrufo does not dispute, and his sentence is modified accordingly. *See* § 13-4037.

Legality of Sentence

¶13 Marrufo next appears to argue the trial court's restitution order is erroneous because "[t]he Bankruptcy Court discharged that debt in the name of Huntington National Bank." Marrufo did not object to the restitution order below, and therefore

[3]This number was based on Marrufo's originally scheduled sentencing date of September 22, 2014.

has forfeited review for all but fundamental, prejudicial error. *See State v. Alvarez*, 228 Ariz. 579, ¶ 16, 269 P.3d 1203, 1207 (App. 2012). The imposition of an illegal sentence, however, is fundamental error. *Id*. ¶ 17.

¶14 The victim in a criminal case is entitled to restitution "in the full amount of the economic loss as determined by the court." A.R.S. § 13-603(C). A trial court "'has wide discretion in setting restitution based on the facts of each case.'" *State v. Dixon*, 216 Ariz. 18, ¶ 11, 162 P.3d 657, 660 (App. 2007), *quoting State v. Ellis*, 172 Ariz. 549, 551, 838 P.2d 1310, 1312 (App. 1992). And "[w]e will uphold a restitution award if it bears a reasonable relationship to the loss sustained." *Id.*

¶15 Evidence adduced at trial showed that Huntington Bank suffered a loss of $45,181.98 because of Marrufo's fraudulent check. The record does not contain any evidence that this debt was discharged in bankruptcy proceedings, and Marrufo cites no record support for the assertion. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi). And Marrufo has cited no legal authority that a bankruptcy discharge would preclude a restitution award. Accordingly, because the restitution award was for the exact amount of economic loss suffered by Huntington Bank, the trial court did not err, much less err fundamentally, by imposing the restitution order. *See* § 13-603(C); *Dixon*, 216 Ariz. 18, ¶ 11, 162 P.3d at 660.

¶16 Marrufo also argues that the restitution portion of the sentencing minute entry "should not exist" because it "is in a box . . . [p]er boxing rules and four corners rule." He does not cite any legal authority for this assertion, nor explain what the "boxing" and "four corners" rules are, and we therefore do not address this argument further. *See* Ariz. R. Crim. P. 31.13(c)(1)(vi); *Bolton*, 182 Ariz. at 298, 896 P.2d at 838.

¶17 Marrufo also appears to argue that his sentence is erroneous because he did not "affix[] any signature or mark to the sentence signature page" and "den[ies] the mark found on the signature page of the sentence document." A defendant's "right index fingerprint" must be permanently affixed to the sentencing document if he was convicted of a felony, theft, or certain other

crimes. Ariz. R. Crim. P. 26.10(b)(5). And a defendant's presence is required to ensure he received "'the essential warnings and information required to be given after sentence is pronounced,'" to allow a defendant to exercise the right to allocution, and to allow "the judge to personally question and observe the defendant." *State v. Fettis*, 136 Ariz. 58, 59, 664 P.2d 208, 209 (1983), *quoting* Ariz. R. Crim. P. 26.9 cmt.; *see also* Ariz. R. Crim. P. 26.9; Ariz. R. Crim. P. 26.11.

¶18 The sentencing minute entry here reflects that Marrufo was present at his sentencing hearing and his fingerprint was affixed to that minute entry. Additionally, the record shows that Marrufo was afforded the opportunity to speak to the court, which he took, and was provided with an overview of his rights after sentencing. Although Marrufo now "den[ies] the mark found on the signature page of the sentence document," he has not pointed to any part of the record that would indicate the fingerprint is not his and we accordingly reject this argument.

Disposition

¶19 For the foregoing reasons, we affirm Marrufo's convictions and sentences as modified.