

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JAY SONNY JEFFRIES JR.,
Appellant.

No. 2 CA-CR 2014-0440
Filed April 21, 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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201103261
The Honorable Craig A. Raymond, Judge Pro Tempore

AFFIRMED

COUNSEL

Lynn T. Hamilton, Mesa
Counsel for Appellant

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MEMORANDUM DECISION

Judge Vásquez authored the decision of the Court, in which Presiding Judge Kelly and Judge Howard concurred.

VÁSQUEZ, Judge:

¶1 After a jury trial, Jay Jeffries Jr. was convicted of third-degree burglary. The trial court sentenced him as a category-two repetitive offender to a four-year prison term. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), asserting she has reviewed the record but found no arguable issue to raise on appeal. Consistent with *Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d at 97, she has provided “a detailed factual and procedural history of the case with citations to the record” and asks this court to search the record for error. Jeffries has filed a supplemental brief claiming that he is innocent and that he should not have been sentenced as a repetitive offender.

¶2 Viewing the evidence in the light most favorable to sustaining the verdict, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), sufficient evidence supports the jury’s verdict. In December 2011, Jeffries entered the fenced yard of a towing business and attempted to take several items. A.R.S. §§ 13-1501(4), 13-1506(A)(1). And the evidence supports the trial court’s finding that Jeffries had at least three previous felony convictions. Jeffries’s prison sentence is within the statutory limit and was imposed properly.¹ A.R.S. §§ 13-105(22)(d); 13-703(B)(2), (I); 13-1506(B).

¹Although Jeffries’s previous felony convictions qualified him for a sentence as a category-three repetitive offender, *see* A.R.S. § 13-703(C), the state requested that the trial court sentence Jeffries only as a category-two repetitive offender.

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¶3 In his supplemental brief, Jeffries insists he is innocent. The thrust of his argument, however, is essentially that the jury erred in rejecting his testimony. But it is the jury's province to weigh the evidence and determine the credibility of witnesses. See *State v. Parker*, 231 Ariz. 391, ¶ 73, 296 P.3d 54, 70-71 (2013). And, as we noted above, there was ample evidence supporting Jeffries's conviction. To the extent Jeffries bases his argument on evidence not presented at trial or on his trial counsel's purported failure to present certain evidence, those claims are not cognizable on appeal and instead must be raised in a post-conviction proceeding pursuant to Rule 32, Ariz. R. Crim. P. See Ariz. R. Crim. P. 32.1(a), (h); see also *State v. Spreitz*, 202 Ariz. 1, ¶ 9, 39 P.3d 525, 527 (2002) (holding "ineffective assistance of counsel claims are to be brought in Rule 32 proceedings"); *State v. Denz*, 232 Ariz. 441, ¶ 22, 306 P.3d 98, 104-05 (App. 2013) (distinguishing between sufficiency claim on appeal and claim of actual innocence pursuant to Rule 32).

¶4 Jeffries further asserts, as we understand his argument, that evidence supporting his previous convictions "had been tampered with" and that the use of those convictions to enhance his sentence violated the prohibition against double jeopardy. But he has identified nothing in the record suggesting the evidence of his previous convictions was defective. And sentence enhancement based on a defendant's previous criminal record does not violate double jeopardy. See *State v. Ritacca*, 169 Ariz. 401, 403, 819 P.2d 987, 989 (App. 1991).

¶5 Pursuant to our obligation under *Anders*, we have searched the record for fundamental error and have found none. See *State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). And we have rejected the claims raised in Jeffries's supplemental brief. Accordingly, we affirm Jeffries's conviction and sentence.