

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

JESUS ALBERTO DIAZ,
Appellant.

No. 2 CA-CR 2016-0417
Filed June 29, 2017

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NOT FOR PUBLICATION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. CR20160118001
The Honorable Sean E. Brearcliffe, Judge

AFFIRMED

COUNSEL

Dean Brault, Pima County Legal Defender
By Alex D. Heveri, Assistant Legal Defender, Tucson
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Judge Espinosa and Judge Howard¹ concurred.

V Á S Q U E Z, Presiding Judge:

¶1 After a jury trial conducted in his absence,² Jesus Diaz was convicted of possession of a weapon by a prohibited possessor. The trial court found he had one historical prior felony conviction and sentenced him to a slightly aggravated term of five years' imprisonment.

¶2 Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and, consistent with *State v. Clark*, 196 Ariz. 530, ¶ 32, 2 P.3d 89, 97 (App. 1999), has provided "a detailed factual and procedural history of the case with citations to the record." She asks this court to search the record for error. Diaz has not filed a supplemental, pro se brief.

¶3 Diaz was represented by counsel, and the following evidence, viewed in the light most favorable to sustaining his conviction, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), was sufficient to support the jury's guilty verdict. *See*

¹The Hon. Joseph W. Howard, a retired judge of this court, is called back to active duty to serve on this case pursuant to orders of this court and our supreme court.

²Diaz was advised at his January 2016 arraignment that his failure to appear for trial could result in the trial proceeding in his absence. In April 2016, a bench warrant was issued after he failed to appear for a case management conference; the jury returned its verdict on August 31, 2016, after a trial held in absentia, and Diaz was rearrested pursuant to the bench warrant on November 3, 2016.

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A.R.S. §§ 13-3101(7)(b), 13-3102(A)(4). On December 31, 2015, a Tucson Police Officer approached Diaz while investigating an unrelated matter and, upon seeing the uniformed officer, Diaz looked nervous, turned, and crouched as if to run. The officer made lawful contact with Diaz,³ conducted a pat-down search, and found an operable semiautomatic handgun lodged in Diaz's waistband. The parties stipulated that Diaz had previously been convicted of a felony in Arizona and that his rights to carry or possess a firearm had not been restored, and also stipulated to the admission of a sentencing minute entry for that conviction and a certified "Rights Not Restored Affidavit."

¶4 The trial court subsequently held an evidentiary hearing and found Diaz had multiple prior felony convictions. For purposes of sentencing, the state alleged only one historical prior felony conviction, established by Diaz's 2014 conviction in Pima County Superior Court No. CR20134008, for an offense committed on February 25, 2013. *See* A.R.S. § 13-105(22)(c). Diaz's sentence was within the statutory range authorized for a category two repetitive offender, *see* A.R.S. § 13-703(B), (I), and was properly imposed.

¶5 In our examination of the record, we have found no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744. Accordingly, we affirm Diaz's conviction and sentence.

³The basis for the officer's contact with Diaz was the subject of a motion in limine filed by defense counsel. As resolution of the issue, counsel agreed, on Diaz's behalf, to the state's elicitation of testimony that the officer "lawfully initiated contact" with Diaz.