IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

AMY L. SCHREINER,
Appellant.

No. 2 CA-CR 2019-0051
Filed March 17, 2020

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NOT FOR PUBLICATION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. 31.19(e).

Appeal from the Superior Court in Pima County
No. CR20183552001
The Honorable John Hinderaker, Judge

AFFIRMED

COUNSEL

Barbara LaWall, Pima County Attorney
By Jacob R. Lines, Deputy County Attorney, Tucson
Counsel for Appellee

James Fullin, Pima County Legal Defender
By Jeffrey Kautenburger, Assistant Legal Defender, Tucson
Counsel for Appellant

MEMORANDUM DECISION

Judge Eckerstrom authored the decision of the Court, in which Judge Espinosa and Judge Brearcliffe concurred.

E C K E R S T R O M, Judge:

¶1 Amy Schreiner appeals from the trial court's ruling denying, in part, her motion for entry of clearance of her arrest and indictment pursuant to A.R.S. § 13-4051. We affirm.

¶2 In August 2018, a grand jury indicted Schreiner for one count of aggravated assault with a deadly weapon or dangerous instrument. The alleged victim of the offense was M.D., with whom Schreiner had been in a romantic relationship. The charge was based on an incident in which M.D. trespassed on Schreiner's property to retrieve his tools, an altercation ensued, and Schreiner allegedly shot two bullets at M.D.'s truck as he was leaving.

¶3 In October 2018, Schreiner filed a motion to remand to the grand jury for a redetermination of probable cause, asserting that M.D. had identified Schreiner's son as the shooter and that the detective who testified before the grand jury failed to present this "clearly exculpatory" evidence. She thus reasoned that if the state "had properly advised the grand jury that . . . [M.D.] personally observed through sight and sound [Schreiner's son] . . . fire two rounds at his truck with a handgun, the grand jury would never have indicted . . . Schreiner." The next day, the state filed a motion to dismiss the case without prejudice based on "prosecutorial discretion." The trial court granted the state's motion.

¶4 Shortly thereafter, Schreiner filed a motion for entry of clearance of her arrest and indictment, requesting that her "unlawful arrest and indictment in this matter be cleared from all court records, police records, and any other records of any other agency." Citing § 13-4051, she

asserted her arrest and indictment were "entirely unsupported by even a mere scintilla of evidence."[1]

¶5 After a hearing, the trial court issued its under-advisement ruling granting in part and denying in part Schreiner's motion. The court explained that it was denying the motion with respect to Schreiner's arrest because, although M.D. had reported that Schreiner's son fired the two shots, Schreiner herself "created uncertainty by telling the police that her son could not have shot the gun because he was upstairs in his room." The court also noted that Schreiner's son had reported to police that Schreiner "shot at [M.D.'s] truck." However, the court granted Schreiner's motion with respect to the indictment, explaining that the state had conceded the detective failed to present "clearly exculpatory" evidence to the grand jury. The court also observed that the grand jury proceeding was "fundamentally unfair" and the grand jury "would probably not have indicted [Schreiner] in the first place," had it been properly informed. Schreiner appealed. [2] We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1). *See State v. Mohajerin*, 226 Ariz. 103, ¶ 8 (App. 2010).

¶6 Counsel filed an opening brief citing *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530 (App. 1999), stating he had reviewed the record but "found no tenable issue to raise on appeal" and asking this court to review the record for error. Schreiner has not filed a supplemental brief.

¶7 In *Anders*, the United States Supreme Court determined that counsel, upon finding an appeal to be "wholly frivolous," must provide the court with "a brief referring to anything in the record that might arguably support the appeal" before requesting permission to withdraw. 386 U.S. at 744. With the aid of that brief, the appellate court then reviews the record for reversible error. *See Clark*, 196 Ariz. 530, ¶ 30. But the *Anders* procedure

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[1] Section 13-4051(A) provides: "Any person who is wrongfully arrested, indicted or otherwise charged for any crime may petition the superior court for entry on all court records, police records and any other records of any other agency relating to such arrest or indictment a notation that the person has been cleared."

[2] The state also appealed the under-advisement ruling. But after the trial court denied the state's motion for reconsideration, the state requested—and this court ordered—that its appeal be dismissed.

is limited to the "first appeal from a criminal conviction." 386 U.S. at 739; *see also Denise H. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 257, ¶ 5 (App. 1998) ("The right to file an *Anders* brief derives from the Sixth Amendment right to counsel, which applies to persons 'accused' in 'criminal prosecutions.'").

¶8 No criminal conviction occurred here. Indeed, this appeal arising from Schreiner's motion for entry of clearance of her arrest and indictment is civil in nature. *See Mohajerin*, 226 Ariz. 103, ¶ 7 ("Although § 13-4051 is part of Arizona's criminal code, a petition filed pursuant to this statute initiates a special proceeding that is in the nature of a civil action."). Accordingly, our review under *Anders* is not required. *Cf. Ortega v. Holmes*, 118 Ariz. 455, 456 (App. 1978) (declining to address potential issues under *Anders* because "this is a civil case and *Anders* only applies to criminal prosecutions").

¶9 Schreiner has raised no arguments for us to consider on appeal. *Cf. Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (failure to argue claim generally constitutes abandonment and waiver of that claim). We therefore affirm the trial court's ruling granting in part and denying in part Schreiner's motion for entry of clearance of her arrest and indictment.