IN THE

# ARIZONA COURT OF APPEALS

DIVISION TWO

---

THE STATE OF ARIZONA,
*Appellee*,

*v.*

ROY EUGENE RUSHING,
*Appellant*.

No. 2 CA-CR 2021-0039
Filed November 2, 2021

---

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NOT FOR PUBLICATION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 Pinal County
No. S1100CR201902889
The Honorable Christopher J. O'Neil, Judge

**AFFIRMED**

---

COUNSEL

Janelle A. Mc Eachern, Chandler
*Counsel for Appellant*

**MEMORANDUM DECISION**

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

S T A R I N G, Vice Chief Judge:

**¶1** Following a jury trial, appellant Roy Rushing was convicted of theft of a means of transportation.[1] The trial court found he had two or more historical prior felony convictions and sentenced him to an enhanced, maximum twenty-year prison term, to be served consecutively to the sentences imposed in two other matters. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), stating she has reviewed the record and has found "no arguable question of law that is not frivolous."[2] Consistent with *State v. Clark*, 196 Ariz. 530, ¶ 30 (App. 1999), counsel has provided "a detailed factual and procedural history of the case, with citations to the record," and has asked us to search the record for fundamental error. Rushing has not filed a supplemental brief.

**¶2** Viewed in the light most favorable to sustaining the verdict, *see State v. Delgado*, 232 Ariz. 182, ¶ 2 (App. 2013), the evidence is sufficient here, *see* A.R.S. § 13-1814(A), (D). In June 2019, the victim left his vehicle running in front of his home when he noticed a stranger, later identified as Rushing, in his back yard. After the victim escorted Rushing off his property, Rushing returned and "peel[ed] out" in the victim's vehicle. The

[1]The jury found the aggravating circumstance that "[d]efendant caused physical, emotional, or financial harm to the victim" not proven.

[2]In the course of our review, we discovered that the record on appeal did not include the transcript or exhibits from the hearing on Rushing's prior convictions and that counsel had incorrectly stated in her opening brief that the trial court imposed a ten-year presumptive sentence. Because the transcript and exhibits were part of the record in another matter, we deemed and made them part of the record on appeal in this case, and we gave counsel leave to file a supplemental brief pursuant to *Anders* or withdraw her *Anders* brief and file a merits brief. Counsel subsequently filed an amended *Anders* brief.

victim, who had not given Rushing permission to drive his vehicle, reported it as stolen and later identified Rushing as the perpetrator from a photographic lineup. One of the cell phones discovered in the vehicle after it was recovered contained "selfie" photographs of Rushing and text messages from an individual who referred to himself as "Roy."

**¶3** The record also supports the trial court's finding that Rushing had "at least two historical prior felony convictions." *See* A.R.S. § 13-105(22). And the sentence imposed is within the statutory range. *See* A.R.S. §§ 13-701(C), (D)(11), 13-703(C), (D), (J).

**¶4** Pursuant to our obligation under *Anders*, we have searched the record for fundamental, prejudicial error and have found none. Accordingly, we affirm Rushing's conviction and sentence.