

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

RAY FELIPE KEOLA DELOS-SANTOS,
Appellant.

No. 2 CA-CR 2022-0005
Filed September 7, 2022

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED FOR PERSUASIVE AUTHORITY.
See Ariz. R. Sup. Ct. 111(a)(3); Ariz. R. Crim. P. 31.19(c), (e).

Appeal from the Superior Court in Pinal County
No. S1100CR201901454
The Honorable Christopher J. O'Neil, Judge

APPEAL DISMISSED

COUNSEL

Mark Brnovich, Arizona Attorney General
Linley Wilson, Deputy Solicitor General/Section Chief of Criminal
Appeals
By Tanja K. Kelly, Assistant Attorney General, Tucson
Counsel for Appellee

Weagant Law Offices PLC, Florence
By Megan K. Weagant
Counsel for Appellant

DECISION ORDER

Judge Brearcliffe authored the decision order of the Court, in which Presiding Judge Eppich and Vice Chief Judge Staring concurred.

BREARCLIFFE, Judge:

¶1 After a jury trial in his absence, Ray Delos-Santos was convicted in October 2020 of possession of a dangerous drug and possession of drug paraphernalia. In November 2021, the trial court sentenced him to concurrent, mitigated terms of imprisonment, the longer of which was nine years. On appeal, counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530 (App. 1999), stating she has reviewed the record and was unable to find any “unresolved non-frivolous issue to raise.” For the reasons set forth below, we dismiss this appeal.

¶2 Although counsel acknowledged in her opening brief that the trial court had found at sentencing that Delos-Santos voluntarily absented himself from trial and waived his right to appeal, she nonetheless insisted this court has jurisdiction because Delos-Santos “may have been ill or exposed” to COVID at the time of trial. Noting that counsel had not addressed whether the trial court advised Delos-Santos “he could forfeit the right to appeal if he voluntarily delay[ed] his sentencing for more than ninety days,” *State v. Bolding*, 227 Ariz. 82, ¶ 20 (App. 2011), we ordered her to file a supplemental opening brief addressing our jurisdiction on appeal, including “whether the advisements given to appellant complied with *Bolding* and *State v. Nunn*, 250 Ariz. 366, ¶ 8 (App. 2020).”

¶3 “We have an independent duty to determine whether we have jurisdiction on appeal.” *Nunn*, 250 Ariz. 366, ¶ 4. “Our jurisdiction is prescribed by statute and we have no authority to entertain an appeal over which we do not have jurisdiction.” *State v. Limon*, 229 Ariz. 22, ¶ 3 (App. 2011). Section 13-4033(C), A.R.S., provides that a defendant may not appeal his conviction if his absence prevents sentencing within ninety days after his conviction and he “fails to prove by clear and convincing evidence at the time of sentencing that the absence was involuntary.” In *Bolding*, this court determined that a defendant’s voluntary delay of sentencing was deemed knowing, voluntary, and intelligent only if the “defendant has been informed he could forfeit the right to appeal if he voluntarily delays his sentencing for more than ninety days.” 227 Ariz. 82, ¶ 20. In addition,

STATE v. DELOS-SANTOS
Decision Order of the Court

for § 13-4033(C) to bar an appeal, the trial court must make a finding at sentencing that the defendant knowingly, voluntarily, and intelligently waived his right to appeal. *See State v. Raffaele*, 249 Ariz. 474, ¶ 15 (App. 2020).

¶4 In his supplemental opening brief, Delos-Santos acknowledges that the record supported the trial court's finding at sentencing that he had "voluntarily absent[ed] himself from the proceedings which led to a delay of more than ninety days between the verdict and sentencing" and that he understood "the consequences of doing so, including waiving the right to appeal."¹ Delos-Santos concedes that we lack jurisdiction of his appeal. We agree. Because Delos-Santos's right to appeal was waived, § 13-4033(C) bars this appeal. Accordingly, we do not have jurisdiction pursuant to article VI, § 9 of the Arizona Constitution and A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

¶5 Accordingly, we dismiss this appeal.

¹At the pretrial conference in February 2020, the trial court told Delos-Santos his trial could proceed in his absence if he failed to appear and "if [he is] found guilty at trial and [his] absence prevents sentencing from happening within 90 days, then [he] would also lose [his] right to an appeal." Delos-Santos answered affirmatively when the court asked him if he "underst[oo]d those things." Although the court personally informed Delos-Santos of the trial date more than once, he failed to appear at his trial in October 2020. A warrant for his arrest was issued, and he was apprehended in March 2021 and was sentenced in November 2021. At sentencing, Delos-Santos signed the "Notice of Rights After Conviction," which also explained that he waived the right to appeal if he "failed to appear at sentencing causing the sentencing to occur more than 90 days beyond the date of conviction."