

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

SEP 16 2010

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2010-0015
)	DEPARTMENT B
)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOSE HECTOR SILVA,)	the Supreme Court
)	
)	
)	
)	
)	
)	

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20083010

Honorable Charles S. Sabalos, Judge

AFFIRMED

Emily Danies

Tucson
Attorney for Appellant

V Á S Q U E Z, Presiding Judge.

¶1 Appellant Jose Silva was charged with possession of marijuana for sale and possession of drug paraphernalia. The state alleged the amount of marijuana exceeded the threshold amount of two pounds. *See* A.R.S. § 13-3401(36)(h). Before trial, the court granted the state's motion to dismiss the charge of possession of drug paraphernalia. A jury found Silva guilty of possession of over four pounds of marijuana for sale. The trial court sentenced him to a mitigated prison term of four years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967). After setting forth a complete recitation of the facts in accordance with *State v.*

Clark, 196 Ariz. 530, 2 P.3d 89 (App. 1999), counsel stated she found no issue to raise and requested that this court search the record for fundamental error.

¶2 We have searched the record and find ample evidence proving beyond a reasonable doubt the elements of the offense of possession of marijuana for sale and the jury’s determination that the amount of marijuana was over four pounds. *See* A.R.S. § 13-3405(A)(2), (B)(6), (C), and (D). The evidence established that after law enforcement officers had conducted surveillance of a home they believed was being used to store drugs—a “stash house”—a drug-detecting dog “alerted” at the outside of the house. Officers obtained and executed a search warrant and found Silva and his co-defendant in a car in the garage. In the house they found bales of marijuana weighing about 104 pounds, plastic wrap, scales, and ledgers. The jury clearly disbelieved Silva’s testimony that he had no idea there was marijuana in the house.

¶3 We have found no error during the trial that could be characterized as fundamental. Nor have we found any such error with respect to the mitigated prison term, which was well within the applicable statutory parameters for the offense and was imposed in a lawful manner. We therefore affirm the conviction and the sentence imposed.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge