FILED BY CLERK
AUG -6 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. EDEL PAEZ IBARRA, Appellant.	2 CA-CR 2008-0392 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20074161

Honorable Deborah Bernini, Judge

AFFIRMED

Isabel G. Garcia, Pima County Legal Defender
By Stephan J. McCaffery
Tucson
Attorneys for Appellant

E S P I N O S A, Presiding Judge.

¶1 Appellant Edel Ibarra was charged by indictment in October 2007 with two, class two felonies: transporting more than two pounds of marijuana and involving or using

minors in a drug offense. The first count of the indictment was later amended by stipulation to charge him with transporting the marijuana for sale. His first trial in April 2008 ended in a mistrial when the jury was unable to reach a verdict. After a retrial in October 2008, the eight-person jury found him guilty of transporting the marijuana for sale but not guilty of involving or using minors in the offense. The trial court sentenced him to a substantially mitigated, three-year prison term.

¶2 Appellate counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), substantially complying with *Clark* by "setting forth a detailed factual and procedural history of the case with citations to the record, [so that] this court can satisfy itself that counsel has in fact thoroughly reviewed the record." 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Counsel states he has reviewed the entire record without finding any meritorious issue for appeal and asks us to search for reversible error. Ibarra has not filed a supplemental brief.

¶3 We have examined the record pursuant to our obligation under *Anders* and have found it contains substantial evidence supporting each element necessary to the jury's verdict. At trial, the defense stipulated that the bundled substance was marijuana. Expert testimony established that the total quantity of the marijuana, 341 pounds, was an amount consistent with sale rather than personal use and that the value of the marijuana was approximately $500 per pound, or $170,500. And both of the young occupants of the Pontiac testified that Ibarra had offered to pay them $3,000, or $1,500 apiece, for picking up the load

of marijuana and transporting it to Phoenix. In addition, Ibarra's substantially mitigated, three-year sentence is the term permitted by former A.R.S. § 13-702.01(B)(1)[1] for a class two felony committed by a first-time offender when the court also finds—as the trial court did here—"that at least two mitigating factors listed in [A.R.S.] § 13-702, subsection D apply."

¶4 Having searched the record for error and found none, we affirm Ibarra's conviction and sentence.

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PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

_____
JOSEPH W. HOWARD, Chief Judge

_____
JOHN PELANDER, Judge

[1]The sentencing provisions in Arizona's criminal code have recently been renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, "effective from and after December 31, 2008." *Id.* § 120. We refer in this decision to the statutes as they were numbered when Ibarra committed the offense on January 26, 2007.