

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,
Appellee,

v.

MICHAEL SCOTT DISTEL,
Appellant.

No. 2 CA-CR 2015-0282
Filed May 9, 2016

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NOT FOR PUBLICATION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. 31.24.

Appeal from the Superior Court in Pima County
No. CR20131242001

The Honorable Casey F. McGinley, Judge Pro Tempore
The Honorable Christopher Browning, Judge

AFFIRMED IN PART; VACATED IN PART; REMANDED

COUNSEL

Mark Brnovich, Arizona Attorney General
Joseph T. Maziarz, Section Chief Counsel, Phoenix
By Kathryn A. Damstra, Assistant Attorney General, Tucson
Counsel for Appellee

West, Elsberry, Longenbaugh & Zickerman, PLLC, Tucson
By Anne Elsberry
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 Appellant Michael Distel was convicted of trafficking in stolen property in the second degree and theft of property with a value of less than \$1,000 after a first jury trial. After a second, separate trial, he was convicted of possession of a deadly weapon by a prohibited possessor. The trial court sentenced him to enhanced, minimum and presumptive, concurrent terms of imprisonment, the longest of which were ten years. Counsel has filed a brief in compliance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), stating she has reviewed the record and has found no “arguable, meritorious issues” to raise on appeal. Counsel has asked us to search the record for fundamental error.

¶2 Viewed in the light most favorable to sustaining the verdict, the evidence was sufficient to support the jury’s finding of guilt. See *State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999). The evidence presented at the two trials showed Distel and his girlfriend sold a stolen laptop computer to a buyer through Craigslist. Later, when a search warrant was executed, Distel, a convicted felon whose civil rights had not been restored, was found with a functioning handgun in his pocket.

¶3 Pursuant to our obligation under *Anders*, we have searched the record for fundamental, reversible error and have found such an error in regard to Distel’s sentence. See *State v. Fuller*, 143 Ariz. 571, 575, 694 P.2d 1185, 1189 (1985) (*Anders* requires court to search record for fundamental error). As the state concedes in its supplemental briefing, ordered by this court, the trial court

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improperly sentenced Distel on his theft conviction. Distel was convicted of a theft of property valued at less than \$1,000. That offense is a class one misdemeanor. A.R.S. § 13-1802(G). The trial court, however, indicated Distel had been convicted of a class three felony and imposed the sentence for a category-three repetitive offender for a class six felony. Because the court is required to “fix the term of imprisonment” for a class one misdemeanor within the maximum limitation of six months, A.R.S. § 13-707(A)(1), we remand this matter to the trial court for resentencing on Distel’s theft conviction consistent with this decision. We affirm Distel’s convictions and remaining sentences.