NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

CYNTHIA MARIE NICHOLLS, *Appellant*.

No. 1 CA-CR 16-0052
FILED 7-14-2016

Appeal from the Superior Court in Yavapai County
No. V1300CR201580057
The Honorable Michael R. Bluff, Judge

AFFIRMED

COUNSEL

Arizona Attorney General's Office, Phoenix
By Joseph T. Maziarz
Counsel for Appellee

Law Office of Nicole T. Farnum, Phoenix
By Nicole T. Farnum
Counsel for Appellant

MEMORANDUM DECISION

Judge Maurice Portley delivered the decision of the Court, in which Presiding Judge Samuel A. Thumma and Judge John C. Gemmill joined.

P O R T L E Y, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967) and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Cynthia Marie Nicholls has advised us that she has been unable to discover any arguable questions of law after searching the entire record and has filed a brief requesting us to conduct an *Anders* review of the record. Nicholls was given, but did not take, the opportunity to file a supplemental brief.

FACTS AND PROCEDURAL BACKGROUND[1]

¶2 While executing a search warrant on Nicholls' residence,[2] police discovered a marijuana "grow room" which contained grow lights, Miracle Grow, potted plant stems in soil that was moist to the touch, a work area with marijuana that had been cut up and processed, and bags and containers of harvested marijuana. In a nearby bathroom, five green, leafy, moist marijuana plants hung from the shower rod. Nicholls produced a valid medical-marijuana card, but was not, at the time, authorized to cultivate or produce marijuana as her authorization had expired seven months earlier.

¶3 Nicholls was indicted for production of marijuana and possession of drug paraphernalia. After she voluntarily waived her right to a jury trial, the State dismissed the drug paraphernalia charge and the case was tried before a judge. After the presentation of the State's evidence, Nicholls made an unsuccessful Arizona Rules of Criminal Procedure

[1] We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).

[2] The search warrant was part of an investigation of an individual who was believed to have lived in Nicholls' home.

("Rule") 20 motion, and then testified that she had not grown, planted, or harvested marijuana after her cultivation status expired.

¶4 The court issued a written ruling and found, despite Nicholls' testimony that the plants had been hanging from the shower rod since November 2013, the plants had been recently cut and hung to dry; and found Nicholls guilty of production of marijuana. The court denied Nicholls' motion for new trial, and in the ensuing sentencing hearing, suspended Nicholls' sentence and placed her on supervised probation for two years. Nicholls appeals, and we have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes sections 12-120.21(A)(1), 13-4031, and -4033(A)(1).[3]

DISCUSSION

¶5 We review the denial of a Rule 20 motion de novo, *State v. Gray*, 231 Ariz. 374, 375, ¶ 2, 295 P.3d 951, 952 (App. 2013) (citation omitted), and review the court's statutory interpretation de novo, *State v. Bon*, 236 Ariz. 249, 251, ¶ 5, 338 P.3d 989, 991 (App. 2014). At trial, Nicholls unsuccessfully argued the State was required to prove that the cultivation had been done "for sale." Rejecting her statutory interpretation argument, the court denied her Rule 20 motion.

¶6 The statute, A.R.S. § 13-3401(29), defines produce as "[to] grow, plant, cultivate, harvest, dry, process or prepare for sale." Although Nicholls argued that the phrase "for sale" modified each of the terms in the sequence, the commas merely separate a series of different ways a person could be charged and convicted for producing marijuana, and "prepare for sale" is one of the actions listed in the series, along with growing, cultivating, harvesting or processing the marijuana. Moreover, if the legislature wanted to limit "produce" to actions related to preparing the marijuana for sale, the legislature would have clearly stated so since it knows how to define terms and write statutes. Consequently, the court did not err in interpreting the statutory provision. *See State v. Gill*, 235 Ariz. 418, 419-20, ¶ 6, 333 P.3d 36, 37-38 (App. 2014) (applying last antecedent rule, stating "absent a contrary expression of intent by the legislature, a qualifying phrase shall be applied to the word or phrase immediately preceding it."); *State v. Gongora*, 235 Ariz. 178, 179, ¶ 5, 330 P.3d 368, 369 (App. 2014) (explaining we apply plain language of statute to discern its meaning, and will not engage in any other means of statutory interpretation

[3] We cite the current version of the applicable statutes unless otherwise noted.

when the statute is clear and unambiguous) (citations omitted); *cf. U.S. Nat. Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 454 (1993) (noting plain meaning of statute "typically heed[s] the commands of its punctuation").

¶7 Nicholls also filed a motion for new trial challenging the trial court's assessment of her testimony. She argued that it was undisputed that she did not intend to use the marijuana plants, and that Detective Stevens' testimony on the issue was inadmissible. The trial court, as the finder of fact, weighed the evidence and determined the credibility of witnesses, *see State v. Cid*, 181 Ariz. 496, 500, 892 P.2d 216, 220 (App. 1995), and we will not re-weigh the evidence on appeal if the court's findings are supported by substantial evidence, *see State v. Barger*, 167 Ariz. 563, 568, 810 P.2d 191, 196 (App. 1990) ("Substantial evidence is more than a scintilla and such proof as a reasonable mind would employ to support the conclusion reached.") (internal quotations and citations omitted).

¶8 Here, the court heard the evidence, saw the witnesses, and made findings of fact based on the evidence in reaching its conclusion that Nicholls was guilty of production of marijuana. The evidence supporting the conviction was substantial. Accordingly, the court did not err by denying Nicholls' motion for new trial.

REVERSIBLE ERROR REVIEW

¶9 We have read and considered the opening brief, and have searched the entire record for reversible error. We find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The record, as presented, reveals that Nicholls was represented by counsel at all stages of the proceedings, and her sentence was within the statutory limits.

¶10 After this decision is filed, counsel's obligation to represent Nicholls in this appeal has ended. Counsel must only inform Nicholls of the status of the appeal and Nicholls' future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Nicholls may, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

CONCLUSION

¶11 Accordingly, we affirm Nicholls' conviction and sentence.