

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



DIVISION ONE  
FILED: 08/14/2012  
RUTH A. WILLINGHAM,  
CLERK  
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IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) No. 1 CA-CR 10-0998  
) )  
) 1 CA-CR 11-0282  
) Appellee, ) (Consolidated)  
) )  
) DEPARTMENT C  
) )  
) v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
KEVIN BERNARD PEOPLES, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
) Appellant. )  
) )  
) )  
) )

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-173328-001DT

The Honorable Michael D. Jones, Judge

**AFFIRMED**

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Thomas C. Horne, Arizona Attorney General Phoenix  
By Kent E. Cattani, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Cory D. Engle, Deputy Public Defender  
Attorneys for Appellant

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**B R O W N**, Judge

¶1 Kevin Bernard Peoples ("Defendant") appeals his conviction and sentence for one count of possession for sale of

narcotic drugs. Counsel for Defendant filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that after searching the record on appeal, she was unable to find any arguable grounds for reversal. Defendant was granted the opportunity to file a supplemental brief in *propria persona*, but he has not done so.<sup>1</sup> He has, however, raised several issues through counsel.

¶12 Our obligation is to review the entire record for reversible error. *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). We view the facts in the light most favorable to sustaining the conviction and resolve all reasonable inferences against Defendant. *State v. Guerra*, 161 Ariz. 289, 293, 778 P.2d 1185, 1189 (1989). Finding no reversible error, we affirm.

¶13 On November 24, 2009, Defendant was charged with possession for sale of narcotic drugs, a class 2 non-dangerous felony in violation of Arizona Revised Statutes ("A.R.S.")

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<sup>1</sup> Defendant filed an opening brief on June 23, 2011 that was stricken by this court. The issue raised in that brief was also raised through counsel in this *Anders* brief.

section 13-3408 (2010).<sup>2</sup> The following evidence was presented at trial.

¶4 On November 20, 2009, a group of plain-clothes police officers were walking in the vicinity of 11th Avenue and Grant Street when they were approached by L.P. and his female companion, who asked them what they were looking for. Based on his training and experience, Officer C. determined the question was a reference to drugs; thus, he told L.P. he was looking for "a 50," which is a common term for \$50 worth of crack cocaine. L.P. asked him to give him the \$50 up front and go toward 13th Avenue and Grant Street. Officer C. objected, telling L.P. "I could . . . never see you again. So why don't you get the crack then we'll . . . do our [deal]."

¶5 The officers observed L.P. go toward the area of 13th Avenue and Grant Street, but they briefly lost sight of him. The officers saw Defendant leave a house and walk toward the area where L.P. was standing, but Defendant then briefly returned to his residence. L.P. returned to where the officers were and told Officer C. he'd "better have the money." Defendant then approached the group and asked Officer C. if he wanted "the 50." Officer C. replied that he was interested in purchasing the drugs; however, he "acted" hesitant and asked

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<sup>2</sup> Absent material revision after the date of the alleged offense, we cite the statute's current version.

Defendant for a small \$20 "sample" of the crack cocaine. As Defendant was handing Officer C. the drugs, Officer C. saw that he had "multiple" packages in his possession. Officer C. immediately handed the "sample" to another officer, acting as if they were deciding if was worth \$20. Meanwhile, uniformed officers were signaled to move in and make the arrest.

¶16 The jury found Defendant guilty as charged. After finding that the State met its burden of proving five historical prior convictions, the court sentenced Defendant to a presumptive term of 15.75 years, with 147 days of presentence incarceration credit. Defendant timely appealed.

¶17 Defendant asserts that the trial court lacked jurisdiction over this case because the complaint was not filed within forty-eight hours from the time of his initial appearance, in violation of Arizona Rule of Criminal Procedure 4.1(b). Rule 4.1(b) requires the State to promptly file a complaint after a person is arrested without a warrant and that "[i]f a complaint is not filed within 48 hours from the time of [a defendant's] initial appearance before [a] magistrate, the defendant shall be released from jail." The record shows that Defendant was arrested on November 20, 2009 at 9:00 p.m. but the direct complaint was not filed until November 24, 2009 at 4:48 p.m., which constitutes a violation of the release provision in Rule 4.1(b). To the extent Defendant was kept in jail in

violation of Rule 4.1(b), it was an error in the proceedings, which should not be taken lightly. However, it does not deprive the superior court of jurisdiction. See *State v. Rodriguez*, 205 Ariz. 392, 395 n.1, ¶ 7, 71 P.3d 919, 922 n.1 (App. 2003) (noting that the superior court generally has subject matter jurisdiction "over any criminal case in which the defendant is charged by indictment or information with a felony"); *State v. Gilbert*, 105 Ariz. 475, 477, 467 P.2d 63, 65 (1970) (recognizing that a defendant held "for an unreasonable length of time" has other avenues to enforce the right of release afforded by the rules of criminal procedure).

¶8 Further, Defendant cannot establish fundamental error, which is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." See *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005). To prevail on fundamental error review, Defendant must establish both that such error exists and that the error caused him prejudice. *Id.* at 567, ¶ 20, 115 P.3d at 607. Defendant has not asserted, nor does the record reveal, any indication that the Rule 4.1 violation affected the foundation of his case, took away a right essential to his defense, or was so serious that he could not have received a fair trial. *Id.*; *State v. Lee*, 27 Ariz. App.

294, 295, 554 P.2d 890, 891 (1976) ("Violations must be viewed from a due process standpoint, and a revocation reversed only if prejudice is demonstrated."). Thus, no fundamental error occurred.

¶9 Defendant also argues this court denied him his right to self-representation when it previously issued an order (1) denying his "waiver of appellate counsel" and request to proceed *pro per*; (2) striking his opening brief; and (3) denying his request to dismiss this appeal. These matters were fully addressed in our order and Defendant did not request that they be reconsidered. See Ariz. Rule of Civ. App. Proc. 22(b) ("Any party desiring reconsideration of a decision of an appellate court may file a motion for reconsideration . . . within fifteen days after the filing of the decision."). Thus, we decline to revisit Defendant's arguments about self-representation.

¶10 Finally, Defendant asserts that the Maricopa County Public Defender's Office should not be representing him, suggesting ineffective assistance of counsel and the fact that he has filed a bar complaint against his counsel. This court will not consider claims of ineffective assistance of counsel on direct appeal regardless of merit. *State v. Spreitz*, 202 Ariz. 1, 3. ¶ 9, 39 P.3d 525, 527 (2002). Additionally, the mere filing of a bar complaint does not create a conflict sufficient

to require withdrawal of counsel. *State v. Michael*, 161 Ariz. 382, 384-85, 778 P.2d 1278, 1280-81 (App. 1989).

¶11 We have searched the entire record for fundamental error and find none. All of the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The record shows Defendant was present and represented by counsel at all pertinent stages of the proceedings, was afforded the opportunity to speak before sentencing, and the sentence imposed was within statutory limits. Accordingly, we affirm Defendant's conviction and sentence.

¶12 Upon the filing of this decision, counsel shall inform Defendant of the status of the appeal and his options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Defendant shall have

thirty days from the date of this decision to proceed, if he so desires, with a *pro per* motion for reconsideration or petition for review.

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MICHAEL J. BROWN, PRESIDING JUDGE

CONCURRING:

/S/

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MARGARET H. DOWNIE, JUDGE

/S/

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RANDALL M. HOWE, JUDGE