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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: 07/03/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: sls

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 11-0682  
)  
) DEPARTMENT D  
Appellee, )  
) **MEMORANDUM DECISION**  
v. ) (Not for Publication -  
) Rule 111, Rules of the  
) Arizona Supreme Court)  
MICHAEL DEAN EASTER, )  
)  
Appellant. )  
\_\_\_\_\_ )

Appeal from the Superior Court of Yavapai County

Cause No. P1300CR20080548

The Honorable Celé Hancock, Judge

**AFFIRMED**

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

Phoenix

White Law Offices, PLLC  
By Wendy F. White  
Attorney for Appellant

Flagstaff

Michael Dean Easter  
Appellant

**T H O M P S O N, Judge**

¶1 This case comes to us as 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 Michael Dean Easter (defendant) has advised us that, after searching the entire record, she has been unable to discover any arguable questions of law and has filed a brief requesting that this court conduct an *Anders* review of the record. Defendant has been afforded an opportunity to file a supplemental brief *in propria persona*, and he has done so.

¶2 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 review 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). For the reasons that follow, we affirm.

#### **FACTUAL AND PROCEDURAL HISTORY**

¶3 On April 25, 2008, 911 operators received multiple phone calls regarding a pick-up truck driving northbound on the southbound lanes of the Interstate 17 in Arizona. The truck nearly collided with several vehicles before ultimately striking a semi-truck owned by Great Wide Distribution at approximately 2:00 A.M. The driver of the pick-up truck fled the scene before police arrived. The semi-truck driver suffered injuries to his

stomach, neck, and right arm. The collision resulted in extremely heavy damage to the pick-up truck and damages to the semi-truck totaling \$14,408.38.

¶4 Police ran a check of the truck's license plate to find that the truck was registered to defendant. A search of the surrounding area was then conducted with the assistance of a helicopter. At approximately 8:00 a.m., an Arizona Department of Public Transportation (ADOT) employee informed police that he had detected an unidentified male subject located in a culvert two miles north of the accident site. Officers found defendant lying face down near a fence line in an attempt to hide from view. Defendant had sustained minor scratches and abrasions, and he told police he had received the injuries while attempting to elude the police helicopter. Defendant emanated a strong odor of alcohol when he was taken into custody.

¶5 While in transit to the jail, defendant, without being questioned, volunteered that he had been driving intoxicated. Once at the jail, defendant was read his Miranda rights and stated that he understood and voluntarily waived them. The police officers obtained a telephonic search warrant for defendant's blood and drew two tubes of blood from defendant at 10:32 a.m. Tests on the blood revealed defendant's blood alcohol content (BAC) to be .0551 at the time of the blood draw. Retrograde analysis provided that defendant's BAC was between

.14 and .31 at the time of the accident. During the subsequent police questioning, defendant said that he was upset and drank an entire bottle of Crown Royal. He further stated that he did not know he was driving the wrong direction on the highway or that he had been involved in a head on collision. At the time of the accident, defendant's license was suspended in Ohio, Illinois, Florida, North Carolina, and West Virginia.

¶16 Defendant was indicted on one count of aggravated driving while under the influence of alcohol to the slightest degree (Count 1), a class 4 felony, one count of criminal damage (Count 2), a class 4 felony, one count of aggravated assault (Count 3), a class 3 felony, seven counts of endangerment (Counts 4-10), class 6 felonies, and one count of leaving the scene of an injury accident (Count 11), a class 5 felony. Two counts of endangerment were dismissed at trial. A jury convicted defendant, who was tried in absentia, of all nine remaining counts. A nationwide warrant was issued for defendant's arrest.

¶17 Defendant was arrested in North Carolina in January 2011 on a drug offense and sentenced to six months of imprisonment. Following the completion of his sentence in North Carolina, defendant was brought to Arizona in June 2011 pursuant to his Arizona warrant to face sentencing for his convictions. The trial court sentenced defendant to presumptive sentences of

2.5 years for Count 1, 2.5 years for Count 2, 7.5 years for Count 3, 2.25 years for each of Counts 4 through 8, and 1.5 years for Count 9. Counts 1, 3, and 6 were set to run concurrently, with the remaining counts to run consecutively thereafter. He received 243 days of presentence incarceration credit for each count. Defendant timely appealed.

#### DISCUSSION

¶8 Our review of the record reveals the following sentencing errors. First, the trial court granted defendant too many days of presentence incarceration credit. In determining the amount of credit, the trial court counted from the day he was arrested in North Carolina, and spent time there in jail on a North Carolina drug charge, to the day he was sentenced in Arizona, which totaled 243 days. Defendant is entitled to all presentence incarceration that he spent in custody. See Ariz. Rev. Stat. § 13-712(B) (2001). Nevertheless, defendant is not entitled to presentence incarceration credit for time served in an out of state jail on an out of state charge. *State v. LaLonde*, 156 Ariz. 318, 320, 751 P.2d 978, 980 (App. 1987). This is true even if, as is the case here, defendant had an outstanding Arizona arrest warrant and was technically in custody on both matters. See *State v. Horrisberger*, 133 Ariz. 569, 570, 653 P.2d 26, 27 (App. 1982). Defendant should have received credit for only the time spent in custody in Arizona

prior to his sentencing, which began when he was arrested on June 24, 2011. Therefore, defendant was entitled to only seventy-three days of presentence incarceration credit. However, any illegal sentence that favors the appellant, such as excess presentence incarceration credit, cannot be corrected without the state filing a timely cross-appeal. *State v. Dawson*, 164 Ariz. 278, 281-82, 792 P.2d 741, 744-45 (1990). As the state has not filed a timely cross-appeal, defendant's presentence incarceration credit must remain 243 days.

¶9 Second, the trial court erroneously granted defendant presentence incarceration credit on every sentence, including those that were to run consecutively to one another. See *State v. Jackson*, 170 Ariz. 89, 94, 821 P.2d 1374, 1379 (App. 1991) ("The credit applies to only one of his sentences."); see also *State v. Cuen*, 158 Ariz. 86, 88, 761 P.2d 160, 162 (App. 1988) ("[T]he cases are unanimous in denying double credit against consecutive sentences . . . ."). However, the state must appeal, or cross-appeal when the defendant appeals, if it wishes to challenge an illegally lenient sentence. *Dawson*, 164 Ariz. at 286, 792 P.2d at 749. As the state failed to file a cross-appeal, this court is without jurisdiction to correct the illegally lenient sentence. *Id.*

¶10 We have read counsel's brief and defendant's supplemental brief, and we have searched the entire record for

reversible error and 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. So far as the record reveals, defendant was adequately represented by counsel at all stages of the proceedings.

¶11 Upon the filing of this decision, counsel shall inform defendant of the status of the appeal and his options. Counsel's duty to further defendant's cause on direct appeal is satisfied and 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 has thirty days from the date of this decision in which to proceed, if he so desires, with an *in propria persona* motion for reconsideration or petition for review.

**CONCLUSION**

¶12 We affirm defendant's convictions and sentences.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

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PETER B. SWANN, Presiding Judge

/s/

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MICHAEL J. BROWN, Judge