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: 08/07/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA, Appellee,	1 CA-CR 11-0806
v.	DEPARTMENT B
SHAWN ALBERT MARTINEZ, Appellant.	**MEMORANDUM DECISION** (Not for Publication – Rule 111, Rules of the Arizona Supreme Court)

Appeal from the Superior Court of Maricopa County

Cause No. CR2011-115023-001 DT

The Honorable Connie Contes, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender — Phoenix
By Charles R. Krull, Deputy Public Defender
Attorneys for 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 Shawn Albert Martinez (defendant) has advised us that, after searching the entire record, he 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 not 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)(citation omitted). Finding no reversible error, we affirm.

¶3 In the early morning hours of March 25, 2011, defendant entered a parking lot where U-Haul trucks were located near Cave Creek Road and the Loop-101 freeway. Defendant proceeded to siphon gasoline from the U-Haul trucks. Unbeknownst to defendant, police had been surveilling his actions and upon witnessing defendant place a hose into one of the U-Haul trucks, they moved in and arrested him. Police found defendant next to two full, and one empty, 5-gallon gas tanks. Police also discovered a hose hanging out of a U-Haul truck's gas tank. Upon his arrest, defendant admitted to police, after

being Mirandized, that he was taking the gas for personal use.

¶4 Defendant was charged with one count of burglary in the third degree, a class 4 felony. A jury convicted defendant on this count. Prior to sentencing, defendant admitted to having a prior felony conviction and waived his right to have a separate trial on this matter. Following his admission, the trial court sentenced defendant to a sentence of 3.75 years in prison, a sentence less than the presumptive term. Defendant received forty-eight days of presentence incarceration credit.

¶5 We have read counsel's brief and 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, and the sentence imposed was within the statutory limits.

¶6 Although this is an *Anders* appeal and defendant has not filed a supplemental brief, counsel states that defendant requests review of the following issues: (1) that his confession was coerced by a police promise that he would be let go if he admitted to taking the gas; (2) the picture of the U-Haul parking lot presented at trial did not accurately represent the lot on the night in question because it depicted an empty lot as

opposed to a lot that was full of trucks; and (3) the sentence he received was excessive in light of the small monetary worth of the gas that was stolen.

¶7 First, defendant did not raise the argument that his confession was coerced by police at trial. On appeal, we will consider an issue not raised at trial only if it is a matter of fundamental error. *State v. Bolton*, 182 Ariz. 290, 298, 896 P.2d 830, 838 (1995). Defendant offered no evidence that a promise was ever made to him in an effort to coerce his confession. Thus, on the record provided, we find no fundamental error. Second, defendant makes no argument as to how the use of the photograph for demonstrative purposes prejudiced him. The photograph was used solely to help illustrate the dimensions of the parking lot and the relative locations of the officers and defendant within the parking lot. Moreover, there was testimony at trial that the photograph did not represent how the trucks were located at the time of the incident. As to defendant's sentence, we note that defendant received less than the presumptive sentence and was sentenced within the sentencing guidelines provided by statute. *See* Ariz. Rev. Stat. (A.R.S.) § 13-703 (2010).

¶8 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.

¶9 We affirm defendant's conviction and sentence.

/s/

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JON W. THOMPSON, Judge

CONCURRING:

/s/

____
PATRICIA A. OROZCO, Presiding Judge

/s/

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SAMUEL A. THUMMA, Judge