

NOTE: 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: 08/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) No. 1 CA-CR 11-0870
) 1 CA-CR 11-0871
) 1 CA-CR 11-0872
Appellee,) (Consolidated)
)
v.) DEPARTMENT A
)
) **MEMORANDUM DECISION**
DYLAN JAMES NOACK,)
) (Not for Publication -
Appellant.) Rule 111, Rules of the
) Arizona Supreme Court)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2010-157675-001, CR2010-135141-001,
CR2009-164918-001

The Honorable Kristin C. Hoffman, Judge

AFFIRMED AS MODIFIED

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

James J. Haas, Maricopa County Public Defender Phoenix
By Paul J. Prato, Deputy Public Defender
Attorneys for Appellant

T I M M E R, Presiding Judge

¶1 Dylan James Noack appeals his convictions and resulting sentences from three separate cases: (1) CR2010-157675 after a jury convicted him of one count of possession of marijuana for sale, a class four felony, in violation of Arizona Revised Statutes ("A.R.S.") section 13-3405(A)(2) (West 2012),¹ one count of possession of drug paraphernalia, a class six felony, in violation of A.R.S. § 13-3415(A) (West 2012), and one count of use of wire communication or electronic communication in drug-related transactions, a class four felony, in violation of A.R.S. § 13-3417(A) (West 2012); (2) CR2010-135141 after a jury convicted him of one count of possession or use of marijuana, a class six felony, in violation of A.R.S. § 13-3405(A)(1) and one count of possession of drug paraphernalia, a class six felony, in violation of A.R.S. § 13-3415(A); and (3) CR2009-164918 after the trial court revoked his probation in that case. Noack's counsel filed a brief in accordance with *Smith v. Robbins*, 528 U.S. 259 (2000), *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999), advising this court that after a search of the entire record on appeal, he found no arguable grounds for reversal. This court granted Noack an opportunity to file a

¹ Absent material revisions after the date of an alleged offense, we cite a statute's current version.

supplemental brief in propria persona, but he has not done so. For the following reasons, we affirm but modify Noack's sentence to reflect 426 days' presentence incarceration credit in CR2010-157675 and CR2010-135141.

DISCUSSION

¶2 We have read and considered counsel's brief and have searched the entire record for reversible error. *State v. Leon*, 104 Ariz. 297, 300, 451 P.2d 878, 881 (1969). We find none. The record shows that Noack was represented by counsel at all stages of the proceedings and on appeal, and that the trial court afforded Noack all his rights under the constitution, our statutes, and the Arizona Rules of Criminal Procedure.

¶3 In reviewing the record, however, we find that the trial court failed to grant sufficient presentence incarceration credit to Noack in CR2010-157675 and CR2010-135141. Arizona Revised Statutes § 13-712(B) (West 2012) provides that "[a]ll time actually spent in custody pursuant to an offense until the prisoner is sentenced to imprisonment . . . shall be credited against the term of imprisonment" Custody commences "when a defendant is booked into a detention facility," *State v. Carnegie*, 174 Ariz. 452, 453-54, 850 P.2d 690, 691-92 (App. 1993), but does not include the date of imposition of sentence. *State v. Hamilton*, 153 Ariz. 244, 245-46, 735 P.2d 854, 855-56 (App. 1987).

¶14 The trial court granted Noack 414 days' presentence incarceration credit in CR2010-157675 and 425 days' presentence incarceration credit in CR2010-135141, but he was entitled to 426 days of credit in both cases.² Noack was taken into custody on September 21, 2010 and sentenced on November 21, 2011. Therefore, Noack is entitled to 426 days' presentence incarceration credit. *State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989) ("The trial court's failure to grant appellant full credit for presentence incarceration clearly constituted fundamental error."). Pursuant to A.R.S. § 13-4037 (West 2012), we modify Noack's sentence on all counts in CR2010-157675 and CR2010-135141 to reflect 426 days' presentence incarceration credit.³

CONCLUSION

¶15 After the filing of this decision, counsel's obligations pertaining to Noack's representation in this appeal have ended. Counsel need do no more than inform Noack of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the

² The sentences on all counts in CR2010-157675 and CR2010-135141 are concurrent and therefore the presentence incarceration credit is not different from count to count.

³ The court also failed to grant one day of presentence incarceration credit to Noack in CR2009-164918. Because the 438 days' presentence incarceration credit given exceeds the one-year sentence in that case, however, the issue is moot.

Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Noack shall have thirty days from the date of this decision to proceed, if he desires, with an in propria persona motion for reconsideration or petition for review.

/s/
Ann A. Scott Timmer
Presiding Judge

CONCURRING:

/s/
Patricia K. Norris, Judge

/s/
Donn Kessler, Judge