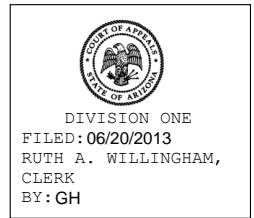


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED  
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE

STATE OF ARIZONA, ) 1 CA-CR 12-0159  
)  
Appellee, ) DEPARTMENT A  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
IVORIE PHILLIP WEATHERSPOON, ) Rule 111, Rules of the  
) Arizona Supreme Court)  
Appellant. )  
)  
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-006584-001

The Honorable Roger E. Brodman, Judge

**AFFIRMED AS MODIFIED**

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Thomas C. Horne, Attorney General Phoenix  
By Joseph T. Maziarz, Chief Counsel  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix  
By Margaret M. Green, Deputy Public Defender  
Attorneys for Appellant

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O R O Z C O, Judge

¶1 Ivorie Phillip Weatherspoon (Defendant) appeals his

conviction and sentence for possession or use of marijuana. Defendant's counsel 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 this court that after a search of the entire appellate record, she found no arguable question of law that was not frivolous. Defendant was afforded the opportunity to file a supplemental brief in propria persona, but he has not done so.

¶2 Our obligation in this appeal is to review "the entire record for reversible error." *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Finding no reversible error, we affirm. However, we modify the trial court's sentencing order to reflect an additional thirteen days of presentence incarceration credit.

#### **FACTS AND PROCEDURAL HISTORY**

¶3 On December 11, 2010, at approximately 10:50 p.m., Arizona Department of Public Safety (DPS) Officer T. was patrolling I-10 in Phoenix when he observed a vehicle traveling at a high rate of speed. Officer T. paced the vehicle and determined that it was driving seventy-six miles per hour in a sixty-five mile per hour zone. While driving behind the vehicle, Officer T. also began to smell an odor of burning marijuana, and he proceeded to initiate a traffic stop.

¶4 After the vehicle stopped on the shoulder of the freeway, the driver, Defendant, began to exit the vehicle. Officer T. told Defendant to return to the vehicle and approached the passenger side. Because the passenger window had been taped shut, Officer T. asked the passenger to open the door. Officer T. testified that when the passenger opened the door, smoke that smelled like burning marijuana "billowed" from the interior of the car.

¶5 Because there were two occupants in the vehicle, Officer T. radioed for another unit. While he was waiting for the other unit to arrive, Officer T. spoke with Defendant and the passenger. Officer T. testified that at that time, Defendant told him they had been "baking" in the car. Officer T. stated that baking occurs when a person is "in a confined space with burning marijuana and inhaling the fumes that come off of that burning marijuana."

¶6 When the backup officer arrived, he and Officer T. arrested Defendant and the passenger. Officer T. subsequently searched the vehicle and found a plastic baggie that contained marijuana in the passenger door map pocket, as well as a package of papers consistent with those used to roll marijuana cigarettes in the center console. He also observed ashes around the center console.

¶7 Officer T. and the backup officer transported Defendant and the passenger to the DPS station. At the station, another officer, Officer K., drew Defendant's blood for testing. The test results revealed that Defendant's blood contained tetrahydrocannabinol (THC), which is the predominant psychoactive ingredient in marijuana, as well as carboxy tetrahydrocannabinol (carboxy-THC), which is a metabolite of THC.

¶8 The State charged Defendant with one count of possession or use of marijuana and one count of possession of drug paraphernalia, both class six felonies. The case proceeded to trial, and the jury found Defendant guilty on the count of possession or use of marijuana.<sup>1</sup> The trial court subsequently sentenced Defendant to 3.75 years in prison.

¶9 Defendant timely appealed. We have jurisdiction pursuant to Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2010), and -4033.A.1 (2010).

## **DISCUSSION**

### **Sufficiency of the Evidence**

¶10 When reviewing the sufficiency of the evidence, we

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<sup>1</sup> The jury acquitted Defendant on the count of possession of drug paraphernalia.

view the evidence "in the light most favorable to sustaining the conviction." *State v. Tison*, 129 Ariz. 546, 552, 633 P.2d 355, 361 (1981). We do not reweigh the evidence and will affirm if substantial evidence supports the jury's verdict. *Id.* "'Substantial evidence' is evidence that reasonable persons could accept as adequate and sufficient to support a conclusion of defendant's guilt beyond a reasonable doubt." *State v. Jones*, 125 Ariz. 417, 419, 610 P.2d 51, 53 (1980).

¶11 Possession or use of marijuana requires proof that the defendant knowingly possessed or used marijuana. A.R.S. § 13-3405.A.1 (Supp. 2012).<sup>2</sup> Knowingly means "that a person is aware or believes that the person's conduct is of that nature or that the circumstances exist." A.R.S. § 13-105.10(b) (Supp. 2012).

¶12 During the trial, Officer T. identified Defendant as the driver of the vehicle. He testified that after he pulled over the vehicle, Defendant stated that he and the passenger were "baking."

¶13 Additionally, a criminalist for the DPS Crime Lab tested the sample of Defendant's blood. The test results revealed that Defendant's blood contained THC, which is the predominant psychoactive ingredient in marijuana, as well as carboxy-THC, which is a metabolite of THC. The criminalist

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<sup>2</sup> Absent material revisions, we cite to the current version of applicable statutes.

testified that when a detectable amount of THC is present in a person's blood, it is typically "indicative of someone using [marijuana] within [approximately] the last . . . four to six hours." He also stated that based on the amount of THC present in Defendant's blood, he believed Defendant was smoking, rather than just passively inhaling, or "baking."

¶14 We find that substantial evidence was presented by the State to support the jury's verdict that Defendant was guilty of possession or use of marijuana.

#### **Sentencing Order Correction**

¶15 During the sentencing hearing, the trial court stated that Defendant was entitled to thirteen days of presentence incarceration credit. However, in the sentencing minute entry, Defendant was not awarded any presentence incarceration credit. "Where there is a discrepancy between the oral sentence and the written judgment, the oral pronouncement of sentence controls." *State v. Hanson*, 138 Ariz. 296, 304-05, 674 P.2d 850, 858-59 (App. 1983). Therefore, we correct the trial court's March 15, 2012 sentencing minute entry to reflect an additional thirteen days of presentence incarceration credit. See *State v. Stevens*, 173 Ariz. 494, 496, 844 P.2d 661, 663 (App. 1992) (modifying sentencing minute entry to correct presentence incarceration credit).

## CONCLUSION

¶16 We have read and considered counsel's brief and have searched the entire record for reversible error and have found none. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. The record indicates that Defendant was represented by counsel at all stages of the proceedings, and the trial court afforded Defendant all of his rights under the Constitution, Arizona statutes, and the Arizona Rules of Criminal Procedure. See *Clark*, 196 Ariz. at 541, ¶ 50, 2 P.3d at 100. The sentence imposed by the trial court was within the statutory limits. *Id.*

¶17 After the filing of this decision, counsel's obligations pertaining to Defendant's representation in this appeal have ended. See *State v. Shattuck*, 140 Ariz. 582, 584, 684 P.2d 154, 156 (1984). Counsel need do no more than inform Defendant of the status of the appeal and Defendant's future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *Id.* at 585, 684 P.2d at 157. Defendant 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.

¶18 For the foregoing reasons, Defendant's conviction and sentence are affirmed, with a modification to the calculation of

presentence incarceration credit.

/S/

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PATRICIA A. OROZCO, Presiding Judge

CONCURRING:

/S/

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PETER B. SWANN, Judge

/S/

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LAWRENCE F. WINTHROP, Judge