

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



DIVISION ONE
FILED: 06/27/2013
RUTH A. WILLINGHAM,
CLERK
BY: sls

STATE OF ARIZONA,) 1 CA-CR 12-0343
)
Appellee,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
) Rule 111, Rules of the
MARVIN THOMPSON,) Arizona Supreme Court)
)
Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-154262-001

The Honorable Roger E. Brodman, Judge

AFFIRMED

Thomas C. Horne, Attorney General Phoenix
by Joseph T. Maziarz, Chief Counsel
Criminal Appeals Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender Phoenix
by Cory Engle, Deputy Public Defender
Attorney for Appellant

T H U M M A, Judge

¶1 This is 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 Marvin Thompson asks this court to search the record for fundamental error. Thompson was given the opportunity to file a supplemental brief but has not done so. After reviewing the record, Thompson's convictions and sentences are affirmed.

FACTS AND PROCEDURAL HISTORY¹

¶2 In October 2011, Thompson crossed Hayden Road on his bicycle, causing a driver to suddenly brake in order to avoid hitting Thompson. After witnessing the incident, Officer Galbraith turned on the overhead lights of her fully marked police vehicle and followed Thompson into a parking lot. Officer Galbraith, in uniform and on foot, approached Thompson and said she stopped him for obstructing a roadway. Officer Galbraith asked Thompson for identification.

¶3 Thompson denied obstructing the roadway, refused to provide his identification and asked if he was under arrest. Although Officer Galbraith stated that he was not under arrest at that moment, she directed Thompson to sit on the ground. Thompson did not follow that direction and rode away on his bicycle. Officer Galbraith then called for backup to search for Thompson.

¹ This court views the facts in the light most favorable to sustaining the superior court's judgment and resolves all reasonable inferences against Thompson. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

¶14 A short time later, Officer Savage, who also was in uniform, located Thompson sitting in a nearby park, approached Thompson and ordered him to show his hands. Officer Galbraith then arrived and advised Thompson he was under arrest. Thompson frustrated the officers' efforts to handcuff him or place him in a compliance hold. Thompson then stood up and started to run away.

¶15 Officer Galbraith attempted to tase Thompson, but the taser was ineffective. Thompson continued running until intercepted by Officer Anderson, who was driving a marked police vehicle, at which time Thompson surrendered and was taken into custody.

¶16 Thompson was charged with (1) Obstructing a Highway or Other Public Thoroughfare, a Class 3 misdemeanor; (2) Failure to Comply with Police Officer, a Class 2 misdemeanor; and (3) Resisting Arrest, a Class 1 misdemeanor.² Thompson waived any right he had to a jury trial. Scottsdale Police Officers Galbraith, Savage and Anderson as well as Thompson testified at trial. On Thompson's motion for judgment of acquittal at the close of the State's case, the superior court acquitted Thompson on the obstruction charge. After considering all the evidence

² Although Count 3 was originally charged as a Class 6 felony, the count was reduced to a Class 1 misdemeanor before trial at the State's request.

and argument, the court found Thompson guilty of failing to comply with a police officer and resisting arrest. The court sentenced Thompson to concurrent sentences of 12 months' unsupervised probation, 25 hours of community restitution and financial consequences, including a fine.

¶7 Thompson timely appealed his convictions and sentences. This court has jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21(A)(1), 13-4031, and -4033.³

DISCUSSION

¶8 Counsel for Thompson advised this court that after a diligent search of the entire record, he found no arguable question of law. This court reviews Thompson's convictions and resulting sentences for fundamental error. See *State v. Henderson*, 210 Ariz. 561, 568, ¶ 22, 115 P.3d 601, 608 (2005). A full review of counsel's brief and the record reveals no reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. The record shows that Thompson was represented by counsel at all stages of the proceedings and was present at all critical stages. The evidence presented at trial was substantial and supports the convictions. All of the proceedings were conducted

³ Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

in compliance with the Arizona Rules of Criminal Procedure, and the sentences imposed were within the statutory limits.

CONCLUSION

¶19 Thompson's convictions and sentences are affirmed. After this decision is filed, counsel's obligation to represent Thompson in this appeal has ended. Counsel must only inform Thompson of the status of the appeal and Thompson's future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Thompson may, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/S/_____
SAMUEL A. THUMMA, Presiding Judge

CONCURRING:

/S/_____
MICHAEL J. BROWN, Judge

/S/_____
LAWRENCE F. WINTHROP, Chief Judge