DIVISION ONE
FILED: 7/25/2013
RUTH A. WILLINGHAM, CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	No. 1 CA-CR 12-0704
	)	1 CA-CR 12-0712
Appellee,	)	(Consolidated)
	)	
v.	)	DEPARTMENT C
	)	
WAYNE GARRETH CARRETHERS,	)	**MEMORANDUM DECISION**
	)	(Not for Publication -
Appellant.	)	Rule 111, Rules of the
	)	Arizona Supreme Court)
	)	
	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause Nos. CR2008-175582-001
CR2012-119764-001

The Honorable David B. Gass, Judge

AFFIRMED

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

James J. Haas, Maricopa County Public Defender — Phoenix
by Joel M. Glynn, Deputy Public Defender
Attorneys for Appellant

S W A N N, Judge

¶1 Defendant Wayne G. Carrethers appeals his convictions and sentences for attempted aggravated assault and for threatening or intimidating. 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). Defendant's appellate counsel has searched the record on appeal and found no arguable nonfrivolous question of law, and asks us to review the record for fundamental error. *See Anders*, 386 U.S. 738; *Smith v. Robbins*, 528 U.S. 259 (2000); *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). Defendant was given the opportunity to file a supplemental brief *in propria persona* but did not do so.

¶2 We have searched the record for fundamental error and find none. Accordingly, we affirm.

FACTS AND PROCEDURAL HISTORY

¶3 In 2009, Defendant pled guilty to aggravated assault and was placed on probation for a term of four years. As a condition of his probation, Defendant was required to "[o]bey all laws." In 2012, Defendant's probation officer filed a petition to revoke probation after Defendant was arrested. Defendant was then indicted for the class 1 misdemeanor offenses of disorderly conduct and threatening or intimidating, and the class 6 felony of attempted aggravated assault. Defendant pled not guilty to all charges.

¶4 Before trial, Defendant entered a stipulation with the state by which he waived his right to a jury trial, admitted to two prior non-historical felony convictions, and admitted that he was on probation at the time of the charged offenses. In return, the state agreed to dismiss its allegation of historical prior felony convictions, and agreed that the sentencing range for a conviction on the attempted aggravated assault charge would be from 1 to 1.8 years. Later, the state asked for and obtained dismissal of the disorderly conduct charge.

¶5 At the bench trial, the state presented evidence of the following facts. On April 13, 2012, the Phoenix Police Department received a call about Defendant. Officer Derrick Minton, driving a marked patrol vehicle and wearing his full police uniform, responded to the call and encountered Defendant walking on a street. Defendant confirmed his name when Officer Minton asked but then stated that he was not going to talk. When Officer Minton exited his vehicle to continue the conversation with Defendant, Defendant yelled and swore at the officer, "throwing his arms around." Defendant also threw his cell phone and wallet onto the ground.

¶6 Concerned by Defendant's behavior, Officer Minton restrained him by handcuffing his hands behind his back. Officer Minton, along with another uniformed officer who had since arrived on the scene, then walked Defendant toward the

patrol vehicle. When the group reached the vehicle, Defendant announced that he had a variety of weapons, including a bomb, and was going to blow up the officers. As Officer Minton began patting down Defendant's lower body to check for weapons, Defendant pulled away from the other officer, moved his head within about six inches of Officer Minton's face, stuck out his tongue, and stated that he was going to lick Officer Minton on the face. Officer Minton moved quickly to push Defendant's head away before Defendant's tongue reached him. Defendant then tried unsuccessfully several more times to lick Officer Minton, stating as he did so that he had HIV and was going to infect Officer Minton.

¶7 In an attempt to control Defendant's movements, the officers pushed Defendant's head into the back window of the patrol vehicle, causing him to sustain minor lacerations. Eventually, the officers were able to place Defendant in the backseat of the vehicle. Defendant refused medical treatment for his injuries.

¶8 At the conclusion of the state's case-in-chief, Defendant moved for judgments of acquittal. The court denied the motion. For his defense, Defendant testified that he had sworn at the officers and asked them to leave him alone. He also admitted having told the officers that he had an assault rifle, a hand grenade, and a bomb, but claimed that these

statements were clearly sarcastic and the officers did not take them seriously. Defendant further admitted having flicked his tongue out while turning his head toward Officer Minton, but claimed that this was merely a gesture of anger and that he neither intended nor threatened to lick anyone. According to Defendant, the officers responded to the tongue gesture by immediately pushing his head into the patrol vehicle.

¶9 After hearing closing arguments, the court found Defendant guilty of threatening or intimidating and attempted aggravated assault. At sentencing, the court found that Defendant's crimes constituted a violation of his probation. The court sentenced Defendant to time served for the threatening or intimidating offense, and to a presumptive prison term of one year for the attempted aggravated assault offense, with credit for 192 days of presentence incarceration. The court ordered that Defendant's probation would be reinstated upon his release from prison.

¶10 Defendant timely filed notices of appeal from his convictions and sentences, and from the orders finding him in violation of his probation and reinstating probation. On Defendant's motion, we consolidated his appeals. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1), 13-4031, and 13-4033(A)(1).

DISCUSSION

¶11 The record reveals no fundamental error. Consistent with Ariz. R. Crim. P. 18.1(b), Defendant executed a written waiver of his right to a jury trial, and the court confirmed by a colloquy with him that his waiver was knowing, voluntary, and intelligent. Further, Defendant was present and represented by counsel at all critical stages.

¶12 The evidence that the state presented at trial was properly admissible and was sufficient to support Defendant's convictions. A person commits the crime of threatening or intimidating when he threatens or intimidates, by word or conduct, to cause physical injury to another. A.R.S. § 13-1202(A)(1). When a person knows or has reason to know that the victim is a peace officer, he commits the crime of attempted aggravated assault when he intentionally takes any action that is a step in a course of conduct planned to culminate in the knowing touching of the victim with the intent to injure, insult, or provoke. A.R.S. §§ 13-1001(A)(2), 13-1203(A)(3), 13-1204(A)(8)(a). Here, the state presented evidence that Defendant told the officers he had a bomb and was going to blow them up, and then attempted to lick a uniformed police officer on the face.

¶13 Because Defendant was found guilty of the charged offenses, the court was not required to hold a hearing to

determine whether he violated his probation. Ariz. R. Crim. P. 27.8(e). At the combined sentencing and probation disposition hearing, the court considered a presentence report, gave Defendant the opportunity to speak, and stated on the record the evidence and materials it considered and the factors it found in imposing sentence and reinstating Defendant's probation. The court imposed legal sentences, acted within its discretion to continue Defendant's probation upon his release from prison, and correctly calculated Defendant's presentence incarceration credit. *See* A.R.S. §§ 13-703(H), 13-707(A)(1); Ariz. R. Crim. P. 27.8(c)(2).

CONCLUSION

¶14 We have reviewed the record for fundamental error and find none. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. Accordingly, we affirm Defendant's convictions and sentences, and we affirm the court's order reinstating his probation.

¶15 Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Defendant of the status of this appeal and Defendant's future options. *Id.* Defendant has thirty days from the date of this decision to file a petition for review *in propria persona*. *See* Ariz. R.

Crim. P. 31.19(a). Upon the court's own motion, Defendant has thirty days from the date of this decision in which to file a motion for reconsideration.

/s/
_____
PETER B. SWANN, Presiding Judge

CONCURRING:

/s/
_____
DIANE M. JOHNSEN, Judge

/s/
_____
RANDALL M. HOWE, Judge