

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

OLEG UGRINCHUK, *Appellant*.

No. 1 CA-CR 12-0795

FILED 11-14-2013

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Appeal from the Superior Court in Maricopa County  
No. CR2011-144028-001 DT  
The Honorable Lisa Daniel Flores, Judge

**AFFIRMED AS MODIFIED**

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COUNSEL

Arizona Attorney General's Office, Phoenix  
By Joseph T. Maziarz

*Counsel for Appellee*

Maricopa County Public Defender's Office, Phoenix  
By Joel M. Glynn

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Kent E. Cattani delivered the decision of the Court, in which Presiding Judge Jon W. Thompson and Judge Lawrence F. Winthrop joined.

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**CATTANI**, Judge:

¶1 Oleg Ugrinchuk appeals his conviction of one count of aggravated assault, a Class 5 felony, and the resulting sentence. Ugrinchuk'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), certifying that, after a diligent search of the record, he found no arguable question of law that was not frivolous. Counsel asks this court to search the record for reversible error. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999). Ugrinchuk was given the opportunity to file a supplemental brief, but did not do so. After reviewing the entire record, we affirm Ugrinchuk's conviction and sentence as modified, adding one additional day of presentence incarceration credit and vacating the portion of the sentencing order requiring Ugrinchuk to pay for his DNA testing.

**FACTS AND PROCEDURAL BACKGROUND<sup>1</sup>**

¶2 In August 2011, Phoenix Police Officer Wright was on duty, driving a marked vehicle, and in uniform. He conducted a traffic stop after seeing Ugrinchuk's vehicle traveling at a high rate of speed and later swerving within its lane. When Officer Wright approached Ugrinchuk's vehicle, Ugrinchuk leaned out the window and began yelling. After Officer Wright asked for Ugrinchuk's license, registration, and insurance, Ugrinchuk responded by saying, "Fuck you. You want to act bad, mother fucker." Officer Kaufman, who had arrived to provide back up, assisted Officer Wright in removing Ugrinchuk from the vehicle and placing him in handcuffs. Officer Kaufman testified that he had to detain Ugrinchuk "because he was yelling, [being] so hostile, and uncooperative."

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<sup>1</sup> We view the facts in the light most favorable to sustaining the jury's verdict. *State v. Fontes*, 195 Ariz. 229, 230, ¶ 2, 986 P.2d 897, 898 (App. 1998).

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¶3 Officer Kaufman walked with Ugrinchuk, now with his hands cuffed behind his back, toward the patrol car when Ugrinchuk lunged backwards at Officer Kaufman, grabbing the crotch area of Officer Kaufman's pants with one or two fingers. Officer Kaufman pulled away and several officers assisted in restraining Ugrinchuk on the ground and placing him in the patrol vehicle. Ugrinchuk was arrested and charged with one count of aggravated assault, a Class 5 felony. Before trial, the State filed allegations of aggravating factors and historical prior felony convictions.

¶4 At trial, Officer Kaufman described Ugrinchuk's lunge as "very fast and direct" and as appearing to be "a deliberate movement." Officer Wright similarly testified that he believed Ugrinchuk's actions were deliberate and intentional. The jurors found Ugrinchuk guilty of as charged.

¶5 At sentencing, the superior court found two historical prior felony convictions, which Ugrinchuk had admitted at trial. The court found several aggravating factors, including three additional felony convictions within ten years prior to this offense, recidivism, and that Ugrinchuk had committed the current offense within four months of release from supervision for a prior offense. The court found in mitigation that Ugrinchuk had family support, but determined that the aggravating circumstances nevertheless warranted the maximum sentence. The court thus sentenced Ugrinchuk to six years' imprisonment, with credit for 195 days' presentence incarceration.

¶6 After the superior court granted Ugrinchuk leave to file a delayed notice of appeal, he timely appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033.<sup>2</sup>

### DISCUSSION

¶7 Having considered counsel's brief and reviewed the record for reversible error, we affirm.

¶8 Ugrinchuk was present and represented by counsel at all stages of the proceedings against him. The record reflects that the superior court afforded Ugrinchuk his rights under the constitution and

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<sup>2</sup> Absent material revisions after the relevant date, we cite a statute's current version.

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our statutes, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial proceedings, and the evidence presented at trial was sufficient to support the jury's guilty verdict.

¶9 A defendant is entitled to presentence incarceration credit for all time spent in custody pursuant to an offense. A.R.S. § 13-712(B). Failure to award sufficient credit constitutes fundamental error. *State v. Ritch*, 160 Ariz. 495, 498, 774 P.2d 234, 237 (App. 1989). Ugrinchuk was arrested late on the night of August 24, 2011 and remained in custody for 196 days until his sentencing on March 8, 2012. The court granted 195 days' presentence incarceration credit at Ugrinchuk's sentencing. Accordingly, the judgment is modified to reflect credit for 196 days' presentence incarceration credit. With this adjustment, Ugrinchuk's sentence falls within the range prescribed by law, with proper credit given for presentence incarceration.

¶10 The superior court also ordered, pursuant to A.R.S. § 13-610, that Ugrinchuk "submit to DNA testing for law enforcement identification purposes and pay the applicable fee for the cost of that testing." In *State v. Reyes*, 232 Ariz. 468, 472, ¶ 14, 307 P.3d 35, 39 (App. 2013), this court held that A.R.S. § 13-610 does not authorize the sentencing court to require the convicted person to pay for his DNA testing. We therefore vacate the portion of the sentencing order requiring Ugrinchuk to pay the cost of his DNA testing. We otherwise affirm Ugrinchuk's conviction and sentence.

CONCLUSION

¶11 After the filing of this decision, defense counsel's obligations pertaining to Ugrinchuk's representation in this appeal will end after informing Ugrinchuk of the outcome of this appeal and his future options. See *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). Ugrinchuk shall have 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.



Ruth A. Willingham · Clerk of the Court  
FILED: mjt