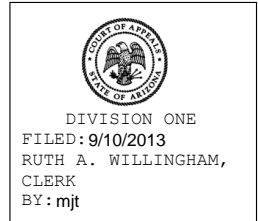


NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0807
) DEPARTMENT A
 Appellee,)
) **MEMORANDUM DECISION**
 v.) (Not for Publication -
) Rule 111, Rules of the
 GERALD VERNELL COLLINS,) Arizona Supreme Court)
)
 Appellant.)
)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-147566-002

The Honorable Cynthia Bailey, Judge

AFFIRMED

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

James Haas, Maricopa County Public Defender Phoenix
By Tennie B. Martin, Deputy Public Defender
Attorney for Appellant

Gerald V. Collins Tucson
Appellant

C A T T A N I, Judge

¶1 Gerald Vernell Collins appeals his conviction of one
count of possession for sale of narcotic drugs, a Class 2

felony, and the resulting sentence. Collins'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, counsel 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). Collins was given an opportunity to file a supplemental brief and did so, arguing that the State did not present sufficient evidence to support his conviction. After reviewing the entire record, we affirm Collins's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND¹

¶2 Phoenix Police Officers Huptich and Elfritz were on patrol when they observed what appeared to be illegal drug activity involving Collins and co-defendant Thomas McLean. The officers set up surveillance using a spotting scope on the top of a parking garage located approximately one city block away. During surveillance, Officer Huptich observed a woman with white hair walk up to McLean. The woman gave McLean some money, and McLean pointed to Collins. The woman approached and spoke with

¹ 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).

Collins, who removed a small white object from an Altoids tin and gave it to her. After the woman left, Collins took another white object from the Altoids tin, placed it in what Officer Huptich identified as a crack pipe, and smoked it.

¶13 Officer Huptich subsequently observed a male with a backpack walk up to Collins. Collins said something to this man and pointed to McLean. The man walked over to McLean, talked with him, and gave him money. The man then returned to Collins, who opened up the Altoids tin, "picked out one of the white objects from the tin[,] and gave it to the subject."

¶14 After the man walked away, Officer Huptich radioed for other officers in the area to make contact with Collins and McLean. As Officer Huptich watched through his scope, he observed Collins quickly pick up the Altoids tin and place it in a black backpack as officers approached. Officer Huptich conveyed this information to the officers on the scene.

¶15 Officers arrived at the scene and attempted to determine who owned the black backpack. After Collins denied knowing to whom it belonged, Officer Fluty searched the backpack and found paperwork with Collins's name on it. Collins then admitted that the backpack belonged to him, gave the officers permission to look inside it, and told Officer Fluty there was an Altoids tin containing cocaine in the side pocket. In

addition to the Altoids tin from the backpack, officers also recovered a large amount of money from McLean's pockets.

¶16 Officers arrested Collins, and he was read his *Miranda*² rights at the South Mountain Precinct. Collins stated that he understood his rights and agreed to answer the officer's questions. Collins admitted (1) he was selling crack cocaine; (2) he had two rocks of cocaine in the Altoids tin; (3) he had given crack cocaine to the woman with the white hair and to the man with the backpack; and (4) he had placed crack cocaine in a pipe and smoked it. Collins was charged by indictment with one count of possession for sale of narcotic drugs, a Class 2 felony.

¶17 Collins subsequently asserted that the police did not read him his *Miranda* rights before questioning, but the superior court rejected this claim after conducting a pre-trial voluntariness hearing.

¶18 After a three-day trial, the jury found Collins guilty of possession for sale of narcotic drugs. Collins admitted to two historical prior felony convictions. The court sentenced Collins as a non-dangerous, repetitive offender to the super-mitigated term of 10.5 years, with 462 days' presentence incarceration credit.

² *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶9 Collins 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), 13-4031, and -4033.³

DISCUSSION

¶10 We have reviewed and considered counsel's brief, Collins's supplemental brief, and the entire record for reversible error. See *Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none.

¶11 Collins contends that the evidence is not sufficient to support his conviction because (1) the cocaine that the State found did not meet the threshold amount of 750 mg required for conviction of the charged offense; (2) the police did not find money or drugs on his person; (3) at trial, the State did not present customers to testify or bring the drugs purchased; and (4) Officer Huptich testified that he could not say for certain that he saw Collins selling drugs.

¶12 As to the issue of threshold amount, meeting or exceeding the threshold amount is not a requirement for conviction of possession for sale of narcotic drugs. See A.R.S. § 13-3408 (A)(2) ("A person shall not knowingly . . . [p]ossess a narcotic drug for sale."); A.R.S. § 13-3408(D) (prohibiting

³ Absent material revisions after the relevant date, we cite a statute's current version.

suspension of sentence, probation, pardon, or release from confinement if amount of narcotic drugs involved in underlying offense meets or exceeds threshold amount). Although the record does not reflect the amount of cocaine recovered, the parties stipulated that the substance seized from inside the Altoids tin found in Collins's backpack contained "cocaine base or hydrolyzed (crack) cocaine, a narcotic drug."

¶13 As to Collins's other arguments, we conclude that sufficient evidence supports his conviction. A large amount of money, presumably from drug sales, was recovered from his accomplice McLean's pockets. See A.R.S. § 13-303. Collins admitted owning the backpack in which drugs were found and even told officers where in the backpack to find the Altoids tin containing crack cocaine. See A.R.S. § 13-105(34) ("'Possess' means knowingly to have physical possession or otherwise to exercise dominion or control over property."). The State was not required to provide testimony from drug customers or to produce the drugs Collins sold. As to uncertainty of testimony, Officer Huptich testified that Collins admitted to him that he was selling crack cocaine. Thus, a rational jury could have reasonably concluded that Collins possessed narcotic drugs for sale. See A.R.S. § 13-3408(A)(2).

¶14 Collins was present and represented by counsel at all stages of the proceeding. The record reflects that the superior

court afforded Collins all his rights under the constitution and our statutes, and that the proceedings were conducted in accordance with the Arizona Rules of Criminal Procedure. The court conducted appropriate pretrial hearings, and the evidence presented at trial and summarized above was sufficient to support the jury's guilty verdict. Collins's sentence falls within the range prescribed by law, with proper credit given for presentence incarceration.

CONCLUSION

¶15 We affirm Collins's conviction and sentence. After the filing of this decision, defense counsel's obligations pertaining to Collins's representation in this appeal will end after informing Collins 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). Collins 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.

/S/

KENT E. CATTANI, Judge

CONCURRING:

/S/

JON W. THOMPSON, Presiding Judge

/S/

LAWRENCE F. WINTHROP, Judge