

NOTICE: NOT FOR PUBLICATION.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

---

STATE OF ARIZONA, *Appellant*,

*v.*

JOSEPH MICHAEL GUY, *Appellant*.

No. 1 CA-CR 13-0185

FILED 12-19-2013

---

Appeal from the Superior Court in Mohave County  
No. S8015CR201200096  
The Honorable Steven F. Conn, Judge

**AFFIRMED**

---

COUNSEL

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

*Counsel for Appellee*

Mohave County Legal Advocate's Office, Kingman  
By Jill L. Evans

*Counsel for Appellant*

State v. Guy  
Decision of the Court

---

**MEMORANDUM DECISION**

Judge Samuel A. Thumma delivered the decision of the Court, in which Presiding Judge Randall M. Howe and Judge Patricia A. Orozco joined.

---

**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 Defendant Joseph Michael Guy have advised the court that, after searching the entire record, they are unable to discover any arguable questions of law, and have filed a brief requesting this court conduct an *Anders* review of the record. Guy was given the opportunity to file a supplemental brief pro se, but has not done so. This court has reviewed the record and finds no reversible error. Accordingly, Guy's conviction and resulting sentence are affirmed.

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

¶2 On July 7, 2011 at 2:00 a.m., Guy was driving a three-wheel all-terrain vehicle (ATV) northbound on Highway 95 in Fort Mohave, Arizona. The ATV had no distinctive marks and had no license plate. Deputy Wilson was on patrol that morning in a marked patrol car, equipped with lights, a siren and large lettering reading "Sheriff."

¶3 After noticing the ATV, Deputy Wilson began to follow Guy, who turned off the highway onto a side street. When Deputy Wilson activated his overhead lights, Guy accelerated and turned onto a dirt field. Deputy Wilson and Guy were traveling about 35-45 miles per hour. Guy was standing up on the ATV weaving through the field in an attempt to kick up dust, but Deputy Wilson could still see Guy, who had turned his head and was looking back at Deputy Wilson for approximately 45 seconds. Although Deputy Wilson thought he recognized Guy, he could not immediately think of Guy's name or how he knew him.

---

<sup>1</sup> This court views the facts "in the light most favorable to sustaining the verdict, and resolve[s] all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).

State v. Guy  
Decision of the Court

¶4 Guy then left the dirt field and drove onto a residential street and eventually through residential yards. By this point, Deputy Wilson had activated his siren and at one point was parallel with Guy and mouthed the word “stop” to him. They were both traveling about 30 miles per hour. Guy then turned off into another field and Deputy Wilson ended the chase. As Deputy Wilson was filling out his report, he was able to recall Guy’s name, and viewed a sheriff’s department photograph and driver’s license to confirm Guy’s identity. In his police report, Deputy Wilson described Guy as wearing a white tank top and board shorts. About a week later, Deputy Wilson visited the residence of Guy’s grandfather (where Guy lived) and observed a red ATV similar to the one he had chased.

¶5 The State charged Guy with willfully fleeing or attempting to elude a pursuing official law enforcement vehicle, a class 5 felony, pursuant to Arizona Revised Statutes (A.R.S.) sections 28-622.01, 28-624(C), 13-701, 13-702, 13-801.<sup>2</sup> Guy was released on bond during the pendency of the case. After a number of continuances, trial was held on January 15, 2013.

¶6 On the date of the trial, Guy did not appear. The superior court acknowledged that although Guy had been at the final trial management hearing, he could have been confused about the trial date because “[h]e has two different cases pending, [and] he has two different attorneys.” Therefore, the court waited until about 10:00 am to see if Guy would appear. When Guy’s attorney tried to contact him, Guy’s grandfather told the attorney that when Guy heard about the trial, he jumped in his truck and took off without telling the grandfather where he was headed. When Guy did not appear by 10:00 am, trial was held in his absence with an appropriate instruction to the jury addressing his absence.

¶7 At trial, in addition to Deputy Wilson’s testimony, the jury heard from Guy’s grandfather, who testified that Guy had a deformed leg and never wore shorts. He also testified that Guy never wore white tank tops or drove three-wheel vehicles because of a prior accident. The jury

---

<sup>2</sup> Absent material revisions after the relevant dates, statutes cited refer to the current version unless otherwise indicated.

State v. Guy  
Decision of the Court

returned a verdict finding Guy guilty as charged. A bench warrant for his arrest issued that same day.

¶8 After Guy was located, sentencing took place on March 7, 2013. After considering evidence provided by the State, the superior court found Guy had two prior felony convictions. The court also found one aggravating factor (Guy's prior felony convictions) and one mitigating factor. Having considered both aggravating and mitigating factors, the court sentenced Guy to a mitigated term of four years in prison with appropriate presentence incarceration credit. Guy timely appeals his conviction and sentence. This court has jurisdiction over his appeal pursuant to A.R.S. §§ 12-120.21(A)(1), 13-4031 and -4033(A)(1).

**DISCUSSION**

¶9 The court has reviewed and considered counsels' brief and has searched the entire record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999) (proving guidelines for briefs when counsel has determined no arguable issues to appeal). Searching the record and brief reveals no reversible error. The record shows Guy was represented by counsel at all stages of the proceedings and counsel was present at all critical stages. From the record, all proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. The sentence imposed was within the statutory limit. Neither counsel nor Guy raised any issues on appeal.

¶10 Although Guy was absent from his trial, he was present at the final trial management conference two weeks prior. Additionally, Guy's attorney had attempted to contact him on the day of the trial and at sentencing Guy made it clear that he knew about the trial and intentionally did not appear, saying "I couldn't show up that day, not with the defense that I had, not with the other defense that I had." The record shows Guy was aware of his trial date, his right to be present at trial and that trial would go forward in his absence. Accordingly, there was no error in proceeding with trial when Guy failed to appear. *See also State v. Suniga*, 145 Ariz. 389, 391-92, 701 P.2d 1197, 1199-1200 (App. 1985) (Ariz. R. Crim. P. 9.1 creates a presumption that absence is voluntary when defendant has notice of trial date).

¶11 After the State's case, Guy moved for a judgment of acquittal. A judgment of acquittal shall be granted before a verdict "if there is no substantial evidence to warrant a conviction." Ariz. R. Crim. P.

State v. Guy  
Decision of the Court

20(a). No acquittal shall be granted “if the evidence is such that reasonable minds may differ on the inferences to be drawn therefrom.” *State v. Paolette*, 133 Ariz. 412, 652 P.2d 151 (App. 1982). The superior court denied the motion finding that because Deputy Wilson had been able to see Guy’s face, the driver of an ATV “is basically out there for the world to see, because they are not in any sort of frame” and here “the pursuer and the person being pursued [were] driving next to each other, five feet away from each other, at 30 miles per hour for an extended period of time,” there was sufficient evidence to allow the case to go forward to the jury. Because the record contains sufficient evidence for a conviction, the superior court properly denied the motion for judgment of acquittal.

**CONCLUSION**

¶12 This court has read and considered counsels’ brief and has searched the record provided for reversible error. *Leon*, 104 Ariz. at 300, 451 P.3d at 881; *Clark*, 196 Ariz. at 537, ¶ 30, 2 P.3d at 96. From the court’s review, the record reveals no reversible error. Accordingly, Guy’s conviction and resulting sentence are affirmed.

¶13 Upon filing of this decision, defense counsel is directed to inform Guy of the status of his appeal and of his future options. Defense counsel has no further obligations unless, upon review, counsel finds an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Guy shall have thirty 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