

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT
PRECEDENTIAL AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

STATE OF ARIZONA, *Appellee*,

v.

ERIK SOTO CERVIN, *Appellant*.

No. 1 CA-CR 16-0202
FILED 4-6-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-100319-001
The Honorable Gregory Como, Judge

AFFIRMED

COUNSEL

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

Maricopa County Office of the Legal Advocate, Phoenix
By Nicole Marie Abarca
Counsel for Appellant

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MEMORANDUM DECISION

Presiding Judge Kent E. Cattani delivered the decision of the Court, in which Judge Lawrence F. Winthrop and Chief Judge Michael J. Brown joined.

CATTANI, Judge:

¶1 Erik Soto Cervin appeals his conviction of possession or use of a dangerous drug and the resulting sentence. Cervin's counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), certifying that, after a diligent search of the record, she found no arguable question of law that was not frivolous. Cervin was given the opportunity to file a supplemental brief, but did not do so. Counsel asks this court to search the record for reversible error. *See State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). After reviewing the record, we affirm Cervin's conviction and sentence.

FACTS AND PROCEDURAL BACKGROUND

¶2 Cervin was arrested during a traffic stop in January 2015, due to his suspected involvement in a robbery three months earlier. Officer Nevin transported him to Mesa's city jail.

¶3 After transferring Cervin to the jail's detention staff, Officer Nevin inspected his police vehicle and found a small pink baggie on the floorboard under the back seat. The baggie appeared to contain "a white crystal substance along with a black tar substance mixed in together." The baggie was not in the vehicle when Officer Nevin searched it at the start of his shift, and no one else had entered the vehicle during the traffic stop or the booking process.

¶4 Cervin later told a detective that the baggie contained methamphetamine. He also "mumbled something" and gestured in the affirmative when asked if the baggie contained heroin. A laboratory analysis confirmed that the baggie contained both methamphetamine and heroin.

¶5 Cervin was indicted on charges of possession or use of a dangerous drug, a class 4 felony, and possession or use of a narcotic drug, a class 4 felony. Ariz. Rev. Stat. ("A.R.S.") §§ 13-3407(A)(1), (B)(1),

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-3401(6)(c)(xxxviii); A.R.S. §§ 13-3408(A)(1), (B)(1), -3401(20)(jjj), (21)(m).¹ He was also indicted on charges related to the robbery, but those charges were eventually dismissed.

¶6 Following trial, a jury convicted Cervin of possession or use of a dangerous drug, but was unable to reach a verdict on the narcotic drug count. The court found five prior convictions and sentenced Cervin as a repetitive offender to a mitigated term of 7 years' imprisonment, with 427 days of presentence incarceration credit. Cervin timely appealed.

DISCUSSION

¶7 We have read and considered counsel's brief and have reviewed the record for reversible error. *See Leon*, 104 Ariz. at 300. We find none.

¶8 Cervin was present and represented by counsel at all stages of the proceedings against him.² The record reflects that the superior court afforded Cervin all his constitutional and statutory rights, 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 verdict. Cervin's sentence falls within the range prescribed by law, with proper credit given for 427 days of presentence incarceration.

CONCLUSION

¶9 Cervin's conviction and sentence are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Cervin's representation in this appeal will end after informing Cervin of the outcome of this appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). On the court's own motion, Cervin has 30 days from the date of this decision to proceed,

¹ Absent material revisions after the relevant date, we cite a statute's current version.

² Defense counsel briefly waived Cervin's presence while the prosecutor and counsel discussed the court's final jury instructions. Cervin was present when the jury returned for instructions.

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if he desires, with a *pro se* motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
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