

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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.

JOSEPH DEVERS TOWNSEND, *Appellant*.

No. 1 CA-CR 16-0702
FILED 6-20-2017

Appeal from the Superior Court in Maricopa County
No. CR2015-132036-001
The Honorable James R. Rummage, Judge *Pro Tempore*

AFFIRMED

COUNSEL

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

Maricopa County Office of the Legal Advocate, Phoenix
By Andrew Charles Marcy
Counsel for Appellant

STATE v. TOWNSEND
Decision of the Court

MEMORANDUM DECISION

Judge Paul J. McMurdie delivered the decision of the Court, in which Presiding Judge Kent E. Cattani and Judge Jon W. Thompson joined.

M c M U R D I E, Judge:

¶1 Joseph Devers Townsend appeals his convictions of one count of possession of a narcotic drug for sale and one count of possession of drug paraphernalia, and the resulting sentences. Townsend’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, he found no arguable question of law that was not frivolous. Townsend 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 Townsend’s convictions and sentences.

FACTS AND PROCEDURAL BACKGROUND

¶2 In July 2015, Officer Harry Dodd of the Phoenix Police Department was on a routine patrol when he saw a man in an alleyway gathering plastic bags and putting them in a backpack. Officer Dodd approached the man and asked him for identification, which the man provided willingly. After identifying the man as Townsend, Officer Dodd lawfully placed him under arrest. A subsequent search of Townsend’s person and belongings revealed a brown rock-like substance, a digital scale, small plastic bags, a ledger, and several hypodermic needles and pipes. A forensics lab test of the brown rock-like substance found it contained 3.49 grams of heroin.

¶3 Townsend was indicted for one count of possession of a narcotic drug for sale, a class 2 felony, and one count of possession of drug paraphernalia, a class 6 felony. Townsend pled not guilty, and moved to suppress the evidence from Officer Dodd’s search. The superior court conducted an evidentiary hearing, after which it denied Townsend’s motion. A jury found Townsend guilty on both counts, as well as an aggravating circumstance that the crime was committed for pecuniary gain. At sentencing, Townsend admitted to two prior felony convictions and the superior court sentenced him to a mitigated term of 10.5 years’

STATE v. TOWNSEND
Decision of the Court

imprisonment for count 1, to be served concurrently with 2.25 years' imprisonment for count 2, with 347 days of presentence incarceration credit. Townsend timely appealed.

DISCUSSION

¶4 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.

¶5 Townsend was represented by counsel at all stages of the proceedings against him. While Townsend was not present at trial, he waived his presence voluntarily by failing to appear at the proceedings. Townsend's counsel filed an affidavit in March 2016 stating that he had informed Townsend of the scheduled trial date and time. The record reflects the superior court afforded Townsend all his constitutional and statutory rights, and 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 verdicts. Townsend's sentences fall within the range prescribed by law, with proper credit given for presentence incarceration.

CONCLUSION

¶6 Townsend's convictions and sentences are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Townsend's representation in this appeal will end after informing Townsend 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, Townsend has 30 days from the date of this decision to proceed, if he desires, with a *pro se* motion for reconsideration or petition for review.



AMY M. WOOD • Clerk of the Court
FILED: AA