

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  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

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STATE OF ARIZONA, *Appellee*,

*v.*

RANDY WAYNE ALVAREZ, *Appellant*.

No. 1 CA-CR 16-0761  
FILED 7-25-2017

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Appeal from the Superior Court in Maricopa County  
No. CR2015-136686-002  
The Honorable Richard L. Nothwehr, Judge *Pro Tempore*

**AFFIRMED**

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COUNSEL

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

Maricopa County Legal Defender's Office, Phoenix  
By Cynthia D. Beck  
*Counsel for Appellant*

Randy Wayne Alvarez, San Luis  
*Appellant*

**MEMORANDUM DECISION**

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

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**C A T T A N I**, Judge:

¶1 Randy Wayne Alvarez appeals his convictions of possession of a dangerous drug and possession of drug paraphernalia and the resulting sentences. Alvarez’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. Alvarez filed a supplemental brief in which he made several arguments related to his trial counsel’s performance. 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 Alvarez’s convictions and sentences.

**FACTS AND PROCEDURAL BACKGROUND**

¶2 In August 2015, Alvarez was the passenger in a truck driven by Jay Holmberg. As they approached Holmberg’s home in Mesa, they saw several police vehicles nearby. The police were present at the home to execute a search warrant in an unrelated matter. Holmberg sped away before coming to a stop half a mile away. Several police officers followed.

¶3 Alvarez got out of the truck and walked into a landscaped area, where he appeared to drop a “bulky item.” Alvarez was detained and an officer examined the dropped item, which was a black zippered pouch. There was a clear glass pipe in the pouch, along with six small baggies containing a white crystalline substance, and one small baggie containing a green leafy substance. Laboratory testing confirmed that the first six baggies contained methamphetamine, and the other contained marijuana. During a police interview, Alvarez admitted that he knew there was methamphetamine in the bag, that he had smoked some of it earlier that day, and that Holmberg had handed him the bag as he left the truck.

¶4 Alvarez was charged with possession of a dangerous drug (methamphetamine), a class 4 felony, possession of marijuana, a class 6 felony, and two counts of possession of drug paraphernalia, both class 6

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felonies. See Ariz. Rev. Stat. (“A.R.S.”) §§ 13-3407(A)(1), (B)(1), -3401(6)(c)(xxxviii); A.R.S. § 13-3405(A)(1), (B)(1); A.R.S. § 13-3415(A).<sup>1</sup> The paraphernalia charges were premised on the baggies used to contain the drugs. A 12-member jury convicted Alvarez of possession of methamphetamine and possession of the methamphetamine paraphernalia, but acquitted Alvarez of the two marijuana-related counts.

¶5 At sentencing, the superior court found six prior felony convictions, and used Alvarez’s two most recent felonies to sentence him as a repetitive offender. The court sentenced Alvarez to slightly mitigated, concurrent sentences of 9 years’ imprisonment for possession of methamphetamine and 3.25 years’ imprisonment for possession of drug paraphernalia, with credit for 30 days of presentence incarceration. Alvarez timely appealed.

DISCUSSION

¶6 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.

¶7 Alvarez’s supplemental brief raises several issues related to the performance of his trial counsel. We do not address these issues, however, because claims of ineffective assistance of counsel may only be brought in a petition for post-conviction relief under Arizona Rule of Criminal Procedure 32. See *State v. Spreitz*, 202 Ariz. 1, 3, ¶ 9 (2002).

¶8 To the extent that Alvarez’s brief can be read to raise other issues appropriate for appellate review, we find no reversible error. Contrary to Alvarez’s assertions, the record shows no indication of prosecutorial misconduct during the grand jury proceedings, discovery, jury selection, or trial. The indictment was legally sufficient, and the superior court had jurisdiction over the case. See A.R.S. § 13-108(A)(1); *Mejak v. Granville*, 212 Ariz. 555, 556, ¶ 4 (2006).

¶9 Although Alvarez claims that the State violated his speedy trial rights under Rule 8 of the Arizona Rules of Criminal Procedure, the record shows that the State complied with all applicable time limits. Alvarez was arraigned on August 25, 2015. Because the case was designated complex, the applicable Rule 8 time limit was 270 days. Ariz. R. Crim. P. 8.2(a)(3)(iii). On two occasions—and in each case before Rule 8

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<sup>1</sup> Absent material revisions after the relevant date, we cite a statute’s current version.

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time had expired—the superior court granted Alvarez’s requests for continuances and excluded a total of 132 days. *See* Ariz. R. Crim. P. 8.4(a) (excluding “[d]elays occasioned by or on behalf of the defendant” from the computation of Rule 8 time limits). His last day thus became September 30, 2016, and he went to trial before that date. Accordingly, Alvarez’s rule-based speedy trial claim fails.

¶10 Moreover, the State did not violate Alvarez’s constitutional speedy trial rights. *See* U.S. Const. amend. VI; Ariz. Const. art. 2, § 24. To determine whether a speedy trial violation has occurred, courts consider “(1) the length of the delay, (2) the reason for the delay, (3) the defendant’s assertion of the right to a speedy trial, and (4) the prejudice to the defendant.” *State v. Parker*, 231 Ariz. 391, 398, ¶ 9 (2013) (citing *Barker v. Wingo*, 407 U.S. 514, 530 (1972)). Alvarez has not proven that any of these factors weigh in his favor. The two continuances were relatively short and occasioned by Alvarez or on his behalf. He did not notify the superior court of any speedy trial issues. And he has not shown prejudice resulting from the delay.

¶11 Alvarez was present and represented by counsel at all stages of the proceedings against him, except for a brief period for which he knowingly, intelligently, and voluntarily waived his right to counsel. The record reflects that the superior court afforded Alvarez 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 was sufficient to support the jury’s verdicts. Alvarez’s sentences fall within the range prescribed by law, with proper credit given for presentence incarceration.

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CONCLUSION

¶12 Alvarez's convictions and sentences are affirmed. After the filing of this decision, defense counsel's obligations pertaining to Alvarez's representation in this appeal will end after informing Alvarez 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, Alvarez 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