

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UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL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

BRIAN GREGORY STREETER, *Appellant*.

No. 1 CA-CR 17-0321
FILED 7-31-2018

Appeal from the Superior Court in Maricopa County
No. CR2014-002658-001
The Honorable Jose S. Padilla, Judge

AFFIRMED

COUNSEL

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

Mays Law Office PLLC, Phoenix
By Wendy L. Mays
Counsel for Appellant

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MEMORANDUM DECISION

Judge Peter B. Swann delivered the decision of the court, in which Presiding Judge Jon W. Thompson and Judge James P. Beene joined.

S W A N N, Judge:

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297 (1969), from Brian Gregory Streeter's convictions and sentences for first degree felony murder, attempt to commit armed robbery, and aggravated assault.¹ Neither Streeter nor his counsel identify any issues for appeal. We have reviewed the record for fundamental error. See *Smith v. Robbins*, 528 U.S. 259 (2000); *Anders*, 386 U.S. 738; *State v. Clark*, 196 Ariz. 530, 537, ¶ 30 (App. 1999). We find none.

¶2 The state presented evidence of the following facts at Streeter's jury trial. On September 13, 2014, E. was sitting on the stairs outside his apartment. Four men, including Streeter, drove into the parking lot of an apartment complex. Seeking money, Streeter and two of his companions exited their vehicle and approached E. Streeter pointed a gun at E., took his cell phone, and rushed him into the apartment. Streeter fatally shot E. in the head and shot another of the apartment's occupants, J., in the arm. Streeter and his companions then drove away.

¶3 Soon thereafter, law enforcement officers arrested Streeter and recovered a handgun during an incident search. Forensic testing showed the bullet that killed E. was fired from that handgun. Testing also revealed Streeter's DNA on a bullet casing found at the scene. Investigators further discovered that the vehicle involved in the incident belonged to Streeter's mother, and they found a memory card containing a picture of E. inside the vehicle.

¶4 The jury convicted Streeter of first degree murder, attempt to commit armed robbery, and aggravated assault. The jury also found at least two aggravating circumstances for each of the offenses. The superior court sentenced Streeter to concurrent prison terms of life with the possibility of

¹ Streeter pled guilty to misconduct involving weapons, thereby waiving his right to directly appeal that conviction. Ariz. R. Crim. P. 17.1(e).

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release after 25 years for the murder, 15 years for the attempted armed robbery, and 15 years for the aggravated assault.

¶5 We find no fundamental error. Streeter knowingly and voluntarily waived his right to counsel, and the court appointed advisory counsel. Streeter was present at all critical stages and advisory counsel was present for almost all stages of the proceedings.² The jury was properly comprised of twelve jurors, A.R.S. § 21-102(A), and there was no evidence of jury misconduct. The court properly instructed the jury on the elements of the charged offenses, Streeter's presumption of innocence, and the state's burden of proof. The court permitted Streeter to speak at sentencing, stated on the record the evidence and the factors it found in imposing the sentences, and imposed lawful sentences under A.R.S. §§ 13-1105(D), -752(A), -1904(B), -1001(C)(2), -1204(E), -701(C), -704(A), and -712(B).³

¶6 We affirm Streeter's convictions and sentences. Defense counsel's obligations pertaining to this appeal have come to an end. *See State v. Shattuck*, 140 Ariz. 582, 584-85 (1984). Unless, upon review, counsel discovers an issue appropriate for petition for review to the Arizona Supreme Court, counsel must only inform Streeter of the status of this appeal and his future options. *Id.* Streeter has 30 days from the date of this decision to file a petition for review *in propria persona*. *See* Ariz. R. Crim. P. 31.21(b)(2)(A). Upon the court's own motion, Streeter has 30 days from the date of this decision in which to file a motion for reconsideration.



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

² Advisory counsel's absence at the beginning of the eighteenth day of trial caused no prejudice. During counsel's absence (to which Streeter did not object), the court heard argument on and denied two of the state's motions.

³ To the extent the court may have credited Streeter with an extra day of presentence incarceration, the unlawfully lenient sentence inures to Streeter's benefit because the state does not cross-appeal. *See State v. Dawson*, 164 Ariz. 278, 286 (1990).